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January 2, 2004

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20523

ENTERED  
Office of Proceedings

JAN 02 2004

Part of  
Public Record

Re: Finance Docket No. 34054, Morristown & Erie Ry., Inc. – Modified Certificate

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of the Petition of Five New Jersey Municipalities to Reopen. Also enclosed is a diskette containing a copy of the petition in Word Perfect format.

Sincerely,

A handwritten signature in dark ink, appearing to be 'S N Stone'.

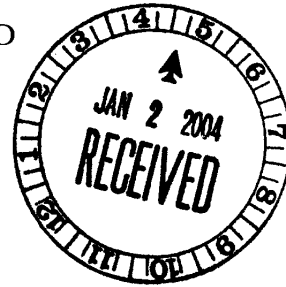
Scott N. Stone

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34054

Morristown & Erie Railway, Inc. –  
Modified Certificate



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Office of Proceedings

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Public Record

PETITION OF FIVE NEW JERSEY MUNICIPALITIES  
TO REOPEN

Petitioners, the New Jersey municipalities of Springfield, Summit, Kenilworth, Roselle, and Roselle Park (hereinafter “the Five Municipalities”)<sup>1</sup> hereby respectfully request the Board to reopen its decision of July 5, 2002 granting a Modified Rail Certificate to the Morristown & Erie Railway, Inc. (“M&E”) to operate certain railroad lines in New Jersey including formerly abandoned lines of the Rahway Valley Railroad (“RVRR”) and Staten Island Railway (“SIRY”). The lines are owned by the state of New Jersey, which has conferred upon Union County jurisdiction to oversee their rehabilitation, and would be operated by the M&E under a contract with Union County. The lines are referred to herein as “RVRR/SIRY.”

Reopening is necessary because of changed circumstances – specifically a changed position adopted by Union County subsequent to the July 5, 2002 decision. Under the changed position, the county is proceeding with reconstruction of the rail lines despite previous assurances to the Five Municipalities that reconstruction and operation of the lines would not occur without the Municipalities’ consent. Because the concerns of the Five Municipalities

<sup>1</sup> The municipalities are formally known as the Township of Springfield, the City of Summit, the Borough of Kenilworth, the Borough of Roselle, and the Borough of Roselle Park.

regarding serious environmental and safety issues have not been addressed, reopening is necessary for a thorough environmental review and consideration, at a minimum, of necessary environmental and safety mitigation measures.

**I. Introduction**

Because the Five Municipalities were assured by Union County, prior to the M&E's application for a Modified Certificate, that M&E would not commence implementation of its operating contract without the written concurrence of the County, and that the County would not give its concurrence without the express consent of the Five Municipalities, the Five Municipalities did not participate in the prior proceedings in which the M&E was granted the Modified Certificate. Subsequently, however, Union County breached its commitment to the Five Municipalities, when, following late-night, closed-door discussions on June 5, 2003, the Union County Board of Freeholders voted to proceed with implementation of the M&E operating agreement notwithstanding the objections of the Five Municipalities.

Because they were lulled into non-participation in these proceedings, the Five Municipalities did not have an opportunity to present to the Board their concerns about the serious environmental and safety effects that the reactivation would have on their communities. These include the presence of hazardous waste sites within the right of way which M&E proposes to rehabilitate, the noise and safety impacts that operation of trains will have in the Five Municipalities, where the RVRP/SIRY lines run predominately through residential areas, and the increased air pollution, traffic delays and safety concerns that will result from the need for the RVRP to operate across some 20 streets at grade, including several major state highways.

The Five Municipalities recognize that Modified Certificates are granted under an abbreviated standard of proof regarding the “public convenience and necessity” for rail service. Nonetheless, the Board does not have the power to exempt itself from the requirements of the National Environmental Policy Act. As the Five Municipalities will show, significant environmental issues require that the Board conduct a thorough environmental assessment, and impose conditions necessary to mitigate the adverse environmental effects of reactivation of these lines.

## **II. Background of the Lines**

The lines at issue here were abandoned in the early 1990's. The abandonment of the RVRR lines was approved by the ICC in a decision served August 27, 1992 in Docket No. AB-211, Rahway Valley Railroad Company – Abandonment – Between Aldene and Summit in Union County, NJ, while the abandonment of the SIRY lines was approved in a decision served December 5, 1991 in Staten Island Railway Corporation – Abandonment.

No party protested the abandonment of the RVRR, as there were no remaining shippers over that line. The County of Union filed comments, however, noting the hazardous nature of materials associated with the RVRR's overpasses, embankments, cuts and grade crossings (slip op. at 2.) In addition, the Rahway Valley Railroad Corporation's own environmental report noted the presence of “a few sites of hazardous/toxic wastes” within the right of way. For this reason, the Section of Energy and Environmental recommended, and the ICC imposed, a condition requiring that “prior to any salvage operations, the RVRC should contact the New Jersey Department of Environmental Protection to inform them of the presence of hazardous waste on the right-of-way.”

In 1995, the abandoned lines were acquired by the State of New Jersey under a state program to preserve bridges and railroad rights of way. In June 2000, the State entered into an agreement with Union County whereby the County was vested with the authority to oversee the rehabilitation and any future use for the lines. On May 9, 2002, Union County reached agreement with the M&E on a contract for the possible rehabilitation and reactivation of the lines. Under the contract, the rehabilitation of the RVRP was designated "Phase III" and "Phases IV" work, and was made contingent on the County's providing "written concurrence" to the M&E. (A copy of the contract is attached as Appendix 1.)

The Five Municipalities were actively involved in discussions with Union County about the possible reactivation, particularly the reactivation of the former RVRP/SIRY lines, which passed through their cities. Among other concerns, the Five Municipalities raised the issues of:

- safety to children playing in residential neighborhoods, as the RVRP/SIRY passes directly through the back yards of hundreds of residences, and near parks, schools, and places of worship, often with no fencing whatever,
- traffic delays and congestion, as the line crosses some 20 streets at grade, including two major highways, NJ Route 28 and US Route 22.
- noise from trains operating in many cases barely 30 feet, and in some cases as little as 10 feet, from residents' homes.

Because of their concerns, the Five Municipalities secured from Union County a pledge not to commence reactivation of the lines without the express agreement of the municipalities.

This pledge was embodied in a duly adopted resolution of the Union County Board of Freeholders which stated that:

Whereas, the rail line moves through certain municipalities, the County of Union shall not approve the usage of the rail line right-of-way unless and until the affected municipalities each pass a governing body resolution consenting to such usage.

Union County Board of Chosen Freeholders, Resolution No. 902-02 (8/22/2002) (a copy of the resolution is attached hereto as Appendix 2).

This pledge was repeated many times to the residents and leaders of the Five Municipalities, both orally and in writing, as well as in statements to the press. For example, on September 19, 2002 a representative of Union County wrote to residents of Roselle Park stating that that *“there is no intention of starting any rail service along these lines in your community.”* (Emphasis in original.) Similarly, in an August 7, 2002 letter to Michael Tripodi, Mayor of the Borough of Kenilworth, the County Manager of Union County stated that:

The County of Union entered into a contract with the M&E on May 9, 2002 to provide for the rehabilitation and maintenance of these rail lines and to develop a staged operating plan to support the marketing and distribution needs of Tosco Refinery’s Polypropylene Facility.

However, **the contract with M&E clearly states that rail operations and rehabilitation will not commence until authorized by the County and only when municipal issues and concerns have been addressed and approved by your governing body with regard to this project.**

**Again, let me reiterate that this project only goes forward to the rehabilitation and reactivation stage with the concurrence of both the municipality and the County.**

(Emphasis added.) (Copies of these letters are attached as Appendix 3, and numerous other statements by Union County to residents, leaders and the press are summarized in Appendix 4.)

Although the M&E proceeded to apply to the Board for a Modified Certificate of Public Convenience and Necessity, the Board noted in its decision the clause in Union County’s contract with the M&E specifying that reactivation of the line would not proceed without Union County’s written concurrence. Finance Docket No. 34054, Morristown & Erie Railway, Inc. – Modified Rail Certificate (decision served July 5, 2002).

Notwithstanding these repeated assurances that the rail lines would not be reactivated without the concurrence of the municipalities, Union County abruptly reversed course on June 5, 2003 when, following late-night, closed-door discussions, its Board of Freeholders voted to approve resolution 633-2003, authorizing the County Manager to implement Phases II, III and IV of the contract with the M&E, and rescinding the pledge conditioning such implement on the consent of the affect municipalities.

Subsequently, the Five Municipalities have made extensive efforts to obtain information and commitments and from the M&E and Union County that would address their safety and environmental concerns. These efforts have been met with less than full cooperation, to put it mildly. In the view of the Five Municipalities, the only way their concerns can be addressed in a comprehensive and systematic way is for the Board to perform an environmental assessment of the rehabilitation and reactivation of these lines, and to require the M&E to provide all such information as is necessary for the Board to fully and intelligently address these issues. The Five Municipalities submit that such an environmental review is mandated by NEPA and the Board's regulations, and is the only responsible course of action to ensure that the reconstruction<sup>2</sup> and reactivation of the RVRP/SIRY will not cause undue environmental and safety consequences, or that such consequences can be mitigated.

### **III. Summary of Municipalities' Environmental and Safety Concerns**

The Five Municipalities are chiefly concerned about five environmental and safety issues: (1) the presence of hazardous wastes on the lines, and the effect that replacing ties,

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<sup>2</sup> As shown below, the rehabilitation of the line will be so extensive in many places as to amount to a reconstruction, because of the need for extensive regrading, replacement of ballast and ties, and rebuilding of bridges to provide higher clearances than provided by the former line.

regrading and reconstructing the lines would have on releasing and spreading those substances, (2) the effects of noise from trains operating in residential areas, (3) the increased air pollution caused by increased traffic congestion at rail grade crossings, (4) the impediment to emergency vehicles caused by such traffic congestion and blockage of roads and (5) the danger to residents, especially children, from the operation of trains over largely unfenced rights-of-way through residential areas and near schools, parks, and recreational trails.

The petition is not intended to supply all available evidence on these issues, and indeed much of that evidence cannot be presented by the Five Municipalities because only the M&E and County -- who have full access to the rights-of-way and full knowledge of what they intend to do to rehabilitate and operate the line -- can supply it. But outlined below are ample grounds not only to justify an environmental assessment, but to mandate it.

A. Hazardous Wastes

The Five Municipalities submit that the record of the RVRR abandonment case cited above speaks for itself. The former operator of the line, the Rahway Valley Railroad Corporation ("RVRC"), admitted that hazardous wastes were to be found on the right-of-way at several places, and the ICC required that the RVRC, in the event it salvaged materials from the line, to inform the appropriate environmental regulatory authority so that any necessary mitigation measures would be put in place prior to the salvage operations.

To the knowledge of the Five Municipalities, no formal salvage of any portion of the lines was ever done. An examination of the right of way shows that the original ties used by RVRC -- which are now in deplorable condition -- are still present, along with some but not all of the rails. See the first two photographs in Appendix 5. Perhaps some informal scavenging of rails has taken place. In any event, the point is that the **rehabilitation of the line would disturb**



**the roadbed, and any hazardous materials contained in the ties, ballast, and fill, to the same extent as the salvage operations contemplated when the ICC decided the RVRB abandonment case.**

This is confirmed by the report of an examination of the line done by Messrs, DeSocio, Evers and Sheehan, attached as Appendix 5. Their report, which details the condition of the line in the City of Summit, indicates that rehabilitation of the line will entail not only reconstructing several bridges that have been torn down, but also tearing down and replacing additional bridges, reconstructing numerous concrete piers supporting the line, regrading the roadbed, replacing all ties and rails, and probably widening the roadbed, which as they note, would be a difficult undertaking since the line (in Summit) runs atop a high embankment, at the level of the bridges which carry the line over streets in Summit (and northern Springfield where the line crosses Orchard Street/Shunpike Road). As part of the environmental assessment, a thorough review should be conducted to determine whether disturbed roadbed materials -- potentially containing hazardous substances -- could be adequately contained, collected and safely removed.

The bridges in Summit that were torn down were removed at least in part because they did not provide the standard clearance of 14'. Replacing these bridges with new bridges having the necessary clearance will almost certainly require extensive regrading to raise the level of the approaches to the bridges. This would require the "footprint" of the embankment at ground level to be expanded substantially, in order that the earthen embankment would be able to support a roadbed of the same or increased width. The potential environmental effects of this change could be substantial.

The ICC's 1992 decision approving the abandonment of the RVRB did not state where along the line the hazardous materials were found. The Five Municipalities have uncovered

some information indicating cadmium contamination occurred on the right of way of the RVRR (see Appendix 11, a September 13, 1994 letter from New Jersey Department of Environmental Protection and Energy). The M&E and Union County should be required to submit a complete environmental report including the locations of such materials, an identification of which hazardous substances are found, an assessment of the extent to which the hazardous materials on the right of way have leached into the surrounding soil and water table or migrated owing to the erosion of fill from the railroad embankments, and a full statement of the mitigation measures that will be taken to ensure that no contaminated fill or other materials are released into the environment during the rehabilitation/reconstruction of the line.

B. Noise

It goes without saying that a freight train makes a lot of noise. When the freight train is moving on an right-of-way that is 30 feet away from the back of many homes (and as little as 10 feet in back of some), the disruption to the occupants of those homes is considerable. Additional noise would be created by the use of bells, whistles and horns to warn of the approach of trains to grade crossings.<sup>3</sup>

Apart from promising to use existing and planted vegetation to maintain "sound and visual screening" along rights-of-way (see letter to Mayor Tripodi of Kenilworth, Appendix 6), the M&E has not indicated how it is going to mitigate this problem. Union County has suggested (see Appendix 7) that it will operate trains at "off peak hours, low-volume hours."

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<sup>3</sup> FRA regulations require train warning horns to be set no less than 96dB, to be heard 100 feet in advance. This is louder than a typical alarm clock, which of course is designed to be jarring and to wake people up. See "How Loud Can Sound Be," an article from the The Hartford Courant, May 27, 1999, p. A15, summarized at <http://www.nonoise.org/news/1999/may23.htm#How%20Loud%20Can%20Sound%20Be>.

Does this mean at night? If so, this would exacerbate the health effects of the low frequency noise.<sup>4</sup>

This problem is related to safety and traffic congestion issues (see below). For example, if trains are operated during the day so as not to burden residents with noise at night, there will be more traffic congestion.

D. Increased Air Pollution and Traffic Congestion from Grade Crossing Back-Ups

The lines of the former RVRR cross approximately 20 streets at grade, including two major highways, Route 22 in Union and Route 28 in Roselle Park; the lines of the former SIRC cross approximately eight streets at grade.<sup>5</sup>

These streets are quite busy, even during “non-peak” hours. For example, local newspapers conducted a survey finding that on Route 22, 1,581 vehicles crossed the RVRR tracks in the westbound lanes of Route 22 between 1:00 and 1:30 pm; between 1:30 and 2:00 pm, 1,676 vehicles transited in the eastbound direction. (See Appendix 9, an article from the Union Leader of Union, NJ.) Assuming reasonably that the transit of a train could take three minutes (despite promises that it would take less), that would mean that over 300 vehicles would be backed up and standing idle at the grade crossing during each transit of the train. Because this is a heavily used commercial strip with many driveways to stores, restaurants and other commercial establishments on either side of Route 22, many more vehicles would be backed up in parking lots and driveways.

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<sup>4</sup> The negative health effects of low frequency noise are well documented, and include sleep disturbance, hypertension and heart problems. See, e.g., <http://www.superscript.co.uk/ukna/briefing-110403-b.html>; [http://www.city.toronto.on.ca/health/hphe/pdf/noiserpt\\_attachmentmarch23.pdf](http://www.city.toronto.on.ca/health/hphe/pdf/noiserpt_attachmentmarch23.pdf).

<sup>5</sup> See Appendix 8, a listing of the streets crossed at grade.

The Five Municipalities readily admit that they do not have the resources to undertake a complete scientific study of the air pollution effects of such increased traffic congestion. But they note that the entirety of Northern New Jersey is a non-attainment area under the federal Clean Air Act.<sup>6</sup> This means, in essence, that there is no room for air pollution to get any worse. The entity that wishes to benefit from the effort to revive interest in rail freight along the RVR/SIRY -- the M&E railroad -- should bear the burden of undertaking a study of the air pollution effects of train grade crossings. The Board has the responsibility under NEPA, as the federal permitting authority, to review these air pollution effects.

E. Safety of Residents

The safety of the children and other residents of their communities is of paramount concern to the leaders of the Five Municipalities. Despite many questions and pleas from residents of the affected communities in recent months, the M&E and Union County have made no commitment to provide any new fencing of the RVR/SIRY rights of way.

As previously emphasized, the RVR/SIRY lines pass predominantly through modest middle class residential areas in the Five Municipalities, often passing only 30 feet behind residents' homes. New Jersey is in fact the most densely populated state in the nation. In addition, the lines pass within a quarter-mile of about 20 schools, places of worship, parks and recreation centers. (See Appendix 10 for a list.)

As part of the environmental review process, the M&E and Union County should be directed to meet with the leaders of the Five Municipalities to discuss and agree on appropriate safety mitigation measures, to include adequate fencing of the entire line.

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<sup>6</sup> See, e.g., July 15, 2003 letter from the New Jersey Transportation Planning Agency to the Board submitted in Fin. Dkt. No. 33388, CSX and NS control of Conrail.

#### IV. Legal Requirement of Environmental Assessment in This Case

It goes without saying that, although the Board may have authority to exempt or streamline certain types of actions from its regulatory authority, it does not have authority to exempt itself from the National Environmental Policy Act. Indeed all federal agencies have the obligation to comply with NEPA "to the fullest extent possible." Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), cert. denied, 404 U.S. 942 (1972).

The Board's environmental regulations state that no environmental review is usually done in connection with the discontinuance of service under Modified Certificates, 49 CFR sec. 1105.6, but by implication, the initiation of service under Modified Certificates should be subject to appropriate environmental review. Indeed, inasmuch as there has been no service for several years on the RVRP or SIRY, the initiation of service would by definition be greater than 100%, thus ordinarily triggering environmental review under the thresholds contained in 49 CFR sec. 1105.7(e) (5). Other effects that should be considered triggers for environmental review under sec. 1105.6 and 1105.7 are an increase in noise to 65 dB or greater, and the creation safety effects resulting from vehicle delays at grade crossings. See 49 CFR sec. 1105.7(e) (6) and (7).

As noted, the rehabilitation of these lines, including the extensive removal of old ties and fill, regrading, and bridge construction, make this akin to a new rail line construction project, which of course is subject to extensive environmental review. Indeed, given the additional element that one of the principal customers of the lines is a chemical manufacturing facility, there is an argument that the environmental review here should be at least as thorough as the EIS mandated by the Board recently in connection with the new San Jacinto rail line near Houston in

Fin. Docket No. 34079. But at a minimum, a thorough environmental assessment and consideration of mitigating measures must be undertaken.

V. **Conclusion**

For all of the foregoing reasons, the Board should reopen this proceeding and request that the M&E and Union County supply the Board with all of the information necessary for the Board to undertake a complete environmental assessment of the effects of reactivating the former RVR and SIRY lines.

Respectfully submitted,



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Scott N. Stone  
Patton Boggs, LLP  
2550 M Street, NW  
Washington, DC 20037  
(202) 457-6335

Counsel for the Five Municipalities

CERTIFICATE OF SERVICE

I hereby certify that I have served the following parties by overnight courier for delivery  
on Monday January 5, 2004:

John K. Fiorella, Esq.  
Watson, Stevens, Fiorella & Rutter, LLP  
390 George Street  
PO Box 1185  
New Brunswick, NJ 08903  
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Consolidated Rail Corporation  
Two Commerce Square  
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Philadelphia PA 19103

Kraig M. Dowd, Esq.  
Brownstein, Booth & Associates, PC  
512 42<sup>nd</sup> Street  
Union City, New Jersey 07087  
(counsel for Union County)



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Scott N. Stone

**OPERATING AGREEMENT  
BETWEEN THE COUNTY OF UNION AND  
THE MORRISTOWN AND ERIE RAILWAY**

APPENDIX 1

THIS AGREEMENT, made this 9<sup>th</sup> day of May, in the year 2002, between the *COUNTY OF UNION* (hereafter "the County"), having its principal offices at the Union County Administration Building, Elizabethtown Plaza, Elizabeth, NJ 07207, and the *MORRISTOWN AND ERIE RAILWAY INC.*, its successors or assigns (hereafter "M&E"), a New Jersey corporation, having its principal offices at 49 Abbett Avenue, Morristown, NJ, 07960.

WHEREAS, the State of New Jersey ("the State"), at the urging of the Union County Board of Chosen Freeholders, purchased two rail corridors for future transportation usage; and

WHEREAS, pursuant to The State of New Jersey Bridge Rehabilitation & Improvement and Railroad Right-of-way Preservation Bond Act of 1989 (Public Law 192, Ch. 25), which was approved at a referendum, signed into law on June 30, 1992, and set up a special \$25 million dollar fund to preserve rail right-of-way segments for future use, funds were appropriated to purchase the Staten Island and Rahway Valley Railroads, both of which are located within the County of Union and which lines were acquired by the New Jersey Department of Transportation ("NJDOT") in 1994; and

WHEREAS, by virtue of Freeholder Resolution 813-2000 an agreement dated June 23, 2000 was entered into between the County and NJDOT, whereby the State granted the County the right of entry upon the property under the terms and conditions set forth in said agreement for the purposes of rehabilitating the railroad, track, structures, and right-of-way for the subsequent re-establishment of rail service on the property. (See Exhibit B, Agreement between the NJDOT and the County of Union dated June 23, 2000); and

WHEREAS, the County wishes to provide railroad service on the former Staten Island and Rahway Valley Railroads, which must be operated as a common carrier in accordance with the regulations of the federal Surface Transportation Board ("STB"); and

WHEREAS, the County wishes to grant M&E access to the Premises described hereafter to provide railroad service all in accordance with and subject to such terms and conditions as set forth in an agreement between the County and a third-party operator; and



WHEREAS, one of the key elements in providing for such rail services is the awarding of a contract to a highly qualified third-party operator, who shall undertake to perform and discharge all of the required obligations and responsibilities, and to render the performance required by a third-party operator including, but not limited to, the rehabilitation, maintenance, marketing, and operation of the railroad; and

WHEREAS, pursuant to Resolution 574-01, the County awarded a contract to the M&E to act as the third-party operator in accordance with the terms and conditions of an agreement to be entered into between the County and M&E; and

WHEREAS, M&E is a rail common carrier, and prior to the commencement of rail operations shall have all connecting trackage rights necessary to operate railroad service on the former Staten Island and Rahway Valley Railroads; and

WHEREAS, M&E will be fully responsible for providing high quality personalized service in the operation of the rail lines, to include rental and agreement administration and other matters as set forth in this Agreement between the parties, and in addition shall assume all liability for the operation of said property, and M&E will be further responsible for all routine maintenance (to FRA Class II) and for the control and upkeep of all vegetation and grass, and for the general upkeep of the railroad property; and

WHEREAS, M&E is required to cooperate fully with the County, other funding agencies, and contractors for all rehabilitation and/or construction projects, and M&E will permit any authorized contractors or subcontractors working on these projects access to the property in order to complete the project, subject to advance notification to assure safe train operation; and

WHEREAS, in the aforementioned Resolution 574-01, the County did adopt and incorporate by reference both a Certification of Extraordinary Unspecifiable Service (the "Certificate"), and a certain document annexed thereto entitled: "Compliance with the Requirements of Extraordinary Services" which was annexed to the Certificate ("the Compliance Document"), and the Compliance Document did in turn, at pages 4 and 5 thereof, set forth the County's desire to address the needs of the Bayway Refining Company ("Bayway") for interim and permanent access for railroad freight service over the Staten Island Railroad right of way, Bayway being sometimes referred to in the Compliance Document as "Tosco"; and

WHEREAS, in furtherance of the County's objective of facilitating Bayway's involvement with the reactivation of the Staten Island Railroad, the Compliance Document did

also direct (at page 10, paragraph 1, thereof) that, as a term of the Agreement, M&E should enter an operating agreement with Bayway incorporating a certain undertaking by Bayway, dated May 24, 2001 ("the Bayway Undertaking"), to contribute to the redevelopment of the Staten Island Railroad so that the County might thereby both obtain the benefits of Bayway's contributions to railroad redevelopment stated therein and also induce Bayway's commitment to be a user of the Staten Island Railroad; and

WHEREAS, the incorporation of the Bayway Undertaking into the Agreement is also consistent with, and fulfills Section II.4. (iv) of the Bayway Undertaking, which similarly anticipated the incorporation of the Bayway Undertaking into the Agreement as a condition of Bayway's contributions to the redevelopment of the Staten Island Railroad as set forth therein; and

WHEREAS, the parties agree that the terms of this Agreement shall be interpreted in the broadest possible way; and

WHEREAS, the intent of the parties is to create a corridor of sustainable economic development for the benefit of Union County and the State of New Jersey; and

WHEREAS, all parties will work together to maximize the economic and social benefits to the communities; and

WHEREAS, M&E, the County, and the State recognize that a start up operation is fragile at best, expensive, and requires the mutual cooperation of all parties. In this regard, the parties pledge their cooperation in this start up and operation of the line and its continued success.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein the parties agree as follows:

1. USE OF THE PREMISES

The County grants to M&E access to the property described in Exhibit A attached hereto and incorporated herein (hereafter the "Premises" or "the Lines").

2. TERM

The term of this Agreement shall commence on, May 15, 2002, and terminate on May 15, 2012, unless terminated prior thereto or extended to a later date in accordance with the terms of this Agreement. Provided that M&E has satisfied the terms of this Agreement without any

uncured defaults or uncured material breaches during the aforementioned period, M&E shall have the option to renew this Agreement for up to two (2) additional five (5) year periods. M&E shall exercise this option by giving written notice of its intent to exercise the option at least sixty (60) days prior to the date of expiration of the Agreement.

3. COMPENSATION FOR USE OF PROPERTY

A. *Base Compensation*

M&E shall pay the County for its use of the Premises a base compensation of Two Dollars (\$2.00) per year for ten years for a total of Twenty Dollars (\$20.00) plus such additional compensation as provided below. Payment of the base compensation shall be made in full at the beginning of the Agreement term.

B. *Compensation of the County*

In addition to the Base Compensation, M&E shall pay the County the following portion of the collected rail operating, property-related revenues and other non-rail revenues. M&E shall pay the County 8% of all collected rail revenues in excess of \$65,000 per month up to and including \$155,000 per month and 10% of all collected rail revenues over \$155,000 per month. M&E shall pay the County 10% of all rail related property rights revenues such as those generated by the grant of trackage rights to third party railroads and various types of, easements, licenses, and crossing agreements and all other forms of non-rail revenues. These non-rail revenues shall be without regard to M&E's right to retain the first \$65,000 in monthly rail revenues.

During the first three years of operation, M&E shall be allowed to keep railroad revenues in excess of \$65,000 per month so long as the aggregate revenues collected on an annual basis do not exceed a monthly average of \$65,000. During the first three years of operation, M&E shall be entitled to suspend paying any portion of its rail revenues to the County should the average monthly revenues drop below \$65,000 per month on an annual basis unless and until the monthly average once again equals or exceeds \$65,000. In the fourth year, M&E shall pay the County 10% of all collected rail revenues in excess of \$75,000 per month. All "revenues" referred to throughout this Agreement shall be considered "gross revenues."

In the course of operating the rail lines on the Premises, M&E shall be responsible for the billing, collecting, and forwarding to the County the County's share of M&E revenues in accordance with this Agreement. Accounts between the County and the M&E shall be

settled on a quarterly basis, ending March 31, June 30, September 30, and December 31, respectively, with payment due within 30 days after the quarter ends. The County shall place the funds it receives from the M&E and any other revenue relating to the railroad to which it is entitled in a dedicated interest-bearing account (hereafter "the Railroad Account"), which shall be the property of the County. The funds placed in this account will be used exclusively by the County for the purposes of funding any railroad rehabilitation or other work relating exclusively to the Line, as it may be expanded, including grade crossings and any other economic development projects mutually deemed appropriate. M&E may not bill expenses against this account without prior written approval of the County.

Should any form of passenger service be initiated over the Railroad, the parties will negotiate an agreement covering the arrangements for how service should be provided and the respective rights and liabilities of the parties. In the event that the Line is abandoned, any funds remaining in the Railroad Account shall remain the property of the County.

4. OPERATION OF THE STATEN ISLAND AND RAHWAY VALLEY RAILROADS

A. *Business and Operating Plan*

M&E shall prepare a Business and Operating Plan that will outline and specify the manner in which M&E will conduct the operation of the Staten Island and Rahway Valley Railroads. The Business and Operating Plan will be written in sufficient detail that it will give a clear illustration of M&E's proposed objectives and procedures, and at a minimum will include the following sections for the operating entity:

- 1) Corporate structure including relationship to corporate parent or affiliates;
- 2) Capitalization;
- 3) Marketing plan;
- 4) Operating plan;
- 5) Safety and emergency management plan;
- 6) Maintenance plan;
- 7) Landscape plan;
- 8) Capital spending plan; and
- 9) An Interim Service Plan for Bayway Refining Company's needs.

Further, the Business and Operating Plan must not contain any provisions that conflict with existing County Legislation or Policy. This Business and Operating Plan will be developed in concert with the County.

B. *Rail Service*

For the term of this Agreement the County grants M&E the exclusive right to provide local railroad service as a common carrier on the Staten Island and Rahway Valley Railroads. M&E shall implement the restoration of railroad freight service on the aforementioned rail lines in the following four (4) phases:

PHASE I - M&E shall rehabilitate and restore to regular operation The Staten Island Railroad from MP 4.7 immediately west of the NJ Turnpike in Linden to MP 2.3 immediately east of St. Georges Avenue in Linden.

PHASE II - M&E shall rehabilitate and restore to regular operation The Staten Island Railroad from MP 2.3 immediately east of St. Georges Avenue in Linden to MP 0 at the junction of the Staten Island Railroad and the NJ Transit *Raritan Valley Line* in Cranford, exclusive of the portion of the line immediately west of MP 2.3 to MP .58 at the municipal boundary of the Borough of Roselle and the Township of Cranford. This portion of the rail line shall be rehabilitated only upon the mutual consent of the parties to this Agreement, who will continue to develop an appropriate timeline for such rehabilitation.

PHASE III - M&E shall rehabilitate and restore to regular operation The Rahway Valley Main Line from MP 0 at the junction with the NJ Transit *Raritan Valley Line* in Cranford to MP 3.9 immediately southeast of the Rahway River Bridge in Union, inclusive of the branch line from the junction at MP 3.1 and extending northeast approximately 1.1 miles, and the branch line from the junction at MP 1.1 and extending southeast approximately .50 miles.

PHASE IV - M&E shall rehabilitate and restore to regular operation The Rahway Valley Main Line from MP 3.9 immediately southeast of the Rahway River Bridge in Union to MP 7.1 at the junction of the Rahway Valley Line and the NJ Transit *Morris and Essex Line* in Summit.

M&E shall complete all rehabilitation of the Lines specified in Phases I & II, excepting the limitation specified in Phase II, and be ready to initiate rail services over this segment within 6 months of the execution of this Agreement. Within thirty (30) days of the execution of this Agreement, the County and the M&E agree to establish a timetable for public outreach to the communities along the segments of the Lines identified in Phases III & IV. The purpose of this outreach is to establish a dialogue with the affected communities and develop the most efficient plan to maximize the benefits of this project to the County and the communities along the Lines. ~~The M&E agrees not to proceed with the rehabilitation and commencement of rail services specified in Phase III until it receives the written concurrence of the County.~~ Upon receiving the written concurrence of the County, the M&E shall proceed with the rehabilitation specified in Phase III and be ready to initiate rail services over this segment of the Lines within 9 months of receiving this concurrence. Phase IV of this project shall be rehabilitated only upon the mutual consent of the parties to this Agreement, who will continue to develop an appropriate timeline for such rehabilitation.

Prior to commencing regular common carrier service on the Premises, M&E shall seek federal Surface Transportation Board ("STB") approval by means of a Modified Certificate of Public Convenience and Necessity and shall comply with the applicable regulations of the Federal Railroad Administration at 49 CFR Part 213.5(c) regarding its assumption of track maintenance obligations from the County. M&E further agrees to furnish the County with a draft of its Application for a Modified Certificate of Public Convenience and Necessity and any other required STB filings prior to their submission. M&E shall apply for the Modified Certificate of Public Convenience and Necessity within thirty (30) days of the execution of this Agreement. The M&E shall make every effort to facilitate obtaining this Certificate within six (6) months of the date of filing, but will not be responsible for any delay by the STB beyond M&E's control.

C. *Marketing*

M&E agrees that it shall during the term of this Agreement, and without limitation, promote, advertise, and market the availability of its services to any or all anticipated or potential rail freight service customers. M&E further agrees to provide the County with advance notice of such customer meetings and shall afford the County the opportunity to participate in these

meetings. The County agrees to utilize its resources to the fullest to assist M&E with all of its marketing activities.

M&E shall identify the County's control of the Line in all marketing efforts, advertisements, and publications. M&E shall further identify the Union County Department of Economic Development as the lead agency, along with its address, telephone number, e-mail address, and contact person(s).

The relationship of M&E to the County will be that of an Independent Contractor. Nothing in this Agreement shall be construed as creating an agency relationship between the parties. No M&E agent, employee, or salesman shall have the authority to obligate the County by any verbal or written representation, terms, stipulations, or conditions.

*D. Railway Rehabilitation Funding*

M&E acknowledges that the County's funds for the rehabilitation of the Staten Island and Rahway Valley Railroads may be financed in whole or in part by an NJDOT Grant and/or other funding sources that may require a local match. M&E agrees, regardless of funding sources, to fully cooperate with the County in the application for such funds, the maintenance of eligibility standards, and the observance of any required NJDOT and/or other applicable agencies procedures for disbursement supervision, accountability, and reporting of such funds.

It is the intent of this Agreement that M&E shall serve as the general contractor, and may employ qualified sub-contractors as they deem appropriate, for all rehabilitation construction on the lines. The County reserves the right to employ the services of a railroad engineering consultant who shall have the right to examine all construction plans prior to the rehabilitation work, make on-site visits to inspect the materials and equipment used, and survey the overall progress of the rehabilitation construction. The railroad-engineering consultant shall not be employed in a supervisory capacity over the general contractor and shall coordinate all on-site inspections with the M&E.

*E. M&E's Compensation*

As compensation for all services rendered for operating the Line and maintaining the Premises, M&E shall be entitled to collect, for its use and benefit, all revenues generated by any permissible use of said Premises including, but not limited to:

Operating Revenue derived from handling revenue freight;

Operating Revenue derived from trackage rights fees assessed carriers holding trackage rights over the Line;

Operating Revenue derived from handling special non-freight rail movements;

Operating Revenue derived from providing any future Passenger Rail Service;

Miscellaneous income from demurrage, car hire, equipment leases, freight car repairs; and

Non-operating Revenues from granting easements, licenses, and crossing rights to the extent not reserved to the State and otherwise consistent with this Agreement. Such rights shall be subject to the condition that any buildings or structures placed on the Premises will be non-permanent in nature.

F. *Involvement of the Bayway Refining Company*

The Bayway Refining Company ("Bayway") will be a key component in the redevelopment of the Staten Island Railroad. Its rights, obligations, and conditions for participating in this project are described in a document entitled "Undertaking of Bayway Refining Company to Contribute to Union County's Redevelopment of the Staten Island Railroad," which is hereby incorporated into this Agreement and is attached hereto as Exhibit C.

G. *Bayway Refinery Company Undertaking Provisions*

Notwithstanding the compensation provisions of this Agreement, service rendered pertaining to the Bayway Uses (as defined in the Bayway Undertaking), shall be subject to, and governed by, Section II.2.iii) of the Bayway Undertaking, pursuant to which M&E shall, as a material consideration to the County, contractually undertake to provide Bayway with a Polypropylene Plant Service Agreement (as defined and described in Section II.2.ii of the Bayway Undertaking) under which, services pertaining to Bayway shall be subject to the limitation on charges to Bayway described in Section II.2.iii of the Bayway Undertaking.

M&E's accommodation of the participation of Bayway in accordance with the terms of the Bayway Undertaking is a material consideration to be rendered to the County hereunder, and M&E shall use best efforts to integrate, in a coordinated manner, the "Bayway Improvements", which have been defined therein to include both the Bayway Improvements (as also described and defined in the Bayway Undertaking), together with the installation of three switches, which Bayway has further agreed to install, pursuant to the terms of a certain letter, dated, on or about September 25, 2001, forwarded to the County on behalf of Bayway, and as further consideration



to the County, M&E shall similarly functionally integrate the "Bayway Uses" (as also defined in the Bayway Undertaking) with the redevelopment and operation of the Staten Island Railroad by M&E.

H. *Necessary Provisions Required by the NJDOT*

In an agreement dated June 23, 2000 between the NJDOT and the County, the NJDOT required the County to ensure that specific items outlined in said agreement dated June 23, 2000 must be included in any future agreement between the County and a third-party operator. The following provisions are therefore required in order for the County to meet its obligations under the agreement with the NJDOT and are therefore incorporated into this Agreement:

1) In addition to all other provisions of this Agreement, the M&E has, subject to concurrence by the County and the State, the right to assign trackage rights, execute agreements including interchange agreements, and issue any other permits to any rail service provider, including but not limited to New Jersey Transit Rail Operations, in order for those agencies to access areas connected by the Premises, all on a case by case basis. Concurrence by the County and State of M&E's assignment of trackage rights shall not be unreasonably withheld. These agreements shall not diminish the exclusive nature of M&E's right to provide common carrier rail service.

2) The State reserves the right to grant a long term interest in property not required for railroad purposes, as delineated in this Operating Agreement, and to collect and retain any revenue therefrom (e.g., outdoor advertising). The State reserves the exclusive right to run or sell the right to run fiber optic cables above, on, or below the surface of the Premises. At no time, however, will the installation or maintenance of fiber optic cables or any other use by the State or any other party interfere in any way with M&E's use or operation of the Line.

3) Neither the State nor the County will enter into any other agreements involving the railroad right-of-way unless it has the approval of both parties and its purpose is exclusively for the operation of the railroad.

I. *Future Expansion of the Rail Lines*

Industrial Rail Spurs, Team Tracks, Sidetracks, Additions, and/or Expansions of the Line will each be subject to a future Policy regarding their implementation. This future Policy will be developed jointly by the County, M&E, and any other affected agencies. Such Policy will be

reduced to writing as an amended to this Agreement and shall be effective upon execution by the parties hereto.

5. CONDITION OF THE PREMISES

M&E has inspected and examined the Premises and has entered into this Agreement without any representation on the part of the County as to the present condition of the Premises. The County shall, in accordance with this provision and other provisions of this Agreement, neither encumber nor obstruct the Premises in any way not otherwise permitted or contemplated in this Agreement.

6. MAINTENANCE OF THE PREMISES: NORMAL MAINTENANCE

Initially M&E shall at its own expense maintain the Premises including track, right of way, structures, and signals in the same condition as they were in at the commencement of the Agreement term. Once the railroad rehabilitation program (including track, right of way, bridges and structures, and signals) is complete and the track has been deemed by an FRA qualified track inspector to meet FRA class II standards, M&E shall thereafter at its own expense maintain the Premises to an FRA class II track standard throughout the Agreement term. This level of maintenance shall be known as "Normal Maintenance." Any disagreement between the County and M&E regarding the condition of the Premises shall be resolved by the NJDOT's Division of Freight Service, Railroad Section, P.O. Box 600, Trenton, NJ 08625-0600. Upon completion of the railroad rehabilitation program, M&E will use its best efforts to keep the right of way free of all weeds, brush, discarded track material and other debris, and shall maintain all bridges and structures and signals in good working order. The County shall inspect the Premises within a reasonable period after the commencement of the Agreement and at such additional times as required thereafter on a regular basis.

In the course of conducting any normal maintenance or emergency repairs, M&E shall have the responsibility for contacting all public utilities which may be affected by any excavation or digging on the Premises to ensure that there will be no danger or hazard in conducting such activity.

Normal Maintenance shall not include: (a) replacements, repairs or reconstruction necessitated by such natural disasters or acts of God against which insurance is not normally

available; (b) maintenance of the structural integrity of railroad bridges and structures; and (c) other items in the nature of major capital improvements of the Premises.

To the extent that maintenance, replacements, repairs, and improvements other than Normal Maintenance are necessary for safe and efficient operation by M&E on the Premises, M&E shall at the County's, State's or other agency's expense and upon approval of the County or State, undertake to perform such maintenance and make such replacements, repairs, and improvements within a reasonable time after the necessity to do so arises.

All work performed by M&E or any of its contractors or subcontractors at County or State expense including, but not limited to, construction, repairs, or maintenance done on the Premises shall be in accordance with standard railroad construction practices as set forth in the American Railway Engineering Association's *Manual for Railway Engineering*, and any further standards as specified by the FRA. M&E shall use its best efforts to secure the most fiscally prudent contracts for any construction, repairs, or maintenance performed on the Premises.

#### 7. REPAIRS

If such maintenance, repairs or alterations are M&E's obligations pursuant to the provisions contained herein and M&E fails to make such repairs and alterations, the County may, after reasonable notice and an opportunity to remedy such problem, make such repairs or alterations that may be necessary for the proper use, safety and preservation of the Premises. The County may charge M&E for all reasonable costs and expenses incurred by making such repairs or alterations.

If the financing of such maintenance, repairs or alterations are not M&E's obligation pursuant to this Agreement, the County shall, after reasonable notice from M&E, make or secure such financial provision as appropriate for such maintenance, repairs, or alterations. If the County refuses to make such provision, the matter shall be resolved by referral to NJDOT's Division of Freight Service, Railroad Section, P.O. Box 600, Trenton, NJ, 08625-0600. Otherwise, M&E may at its option terminate this Agreement. M&E shall not make any alterations to the Premises that are inconsistent with the intended use of the Premises in accordance with this Agreement. This paragraph shall not be deemed a covenant by the County, and should not be construed as creating an obligation on the part of the County to make any

inspection or repairs. M&E shall accommodate and cooperate with the exercise of (either by Bayway, or by such railroad construction contractors as Bayway may retain) those rights of access and entry made available to Bayway in accordance with Section 4I of the Bayway Undertaking, and M&E shall also provide Bayway with all reasonable notice of operations affecting the Bayway Uses, including but not limited to, notice of "Connecting Track Reactivation" (defined in Section II.2.ii of the Bayway Undertaking).

8. INSURANCE

During the term of this Agreement M&E shall obtain and maintain in force at all times general liability insurance covering its operations, maintenance, and use of the Premises including, but not limited to, all tracks, side tracks, and spurs, bridges and structures, signals, and right of way located upon or comprising said Premises. M&E's general liability insurance shall also cover death and injury to railroad employees and all invitees. In addition, this insurance must cover damage or destruction to, and replacement of, property including any claims involving environmental damage and the release or discharge of hazardous materials.

M&E shall obtain insurance from a carrier acceptable to the County and NJDOT naming the County and the State as additional insureds. Coverage for the County and the State shall include their officers, agents, employees, servants and assigns. The minimum insurance coverage required here for freight service shall be for no less than five million dollars (\$5,000,000) per occurrence with a \$50,000 deductible.

Each insurance policy maintained pursuant to this Agreement shall contain a provision that such policy shall not be cancelled or modified unless the County is notified at least thirty (30) days prior to such cancellation or modification.

M&E shall provide all insurance at the levels required by the New Jersey Transit Corporation for its use of New Jersey Transit trackage in Union County.

9. TAXES & UTILITIES

M&E shall pay, when due, all taxes, if any, assessments, and government charges of any kind that may be lawfully assessed or levied with respect to all or that portion of the Premises which is Class 1 or Class 2 railroad property as defined by the State of New Jersey for tax purposes. In addition, M&E shall pay, when due, all charges for utilities arising out of M&E's

use and operation of the Premises. Nothing contained in this paragraph is intended or shall be construed to prohibit M&E from lawfully contesting the validity of any tax, assessment, or governmental charge assessed or levied with respect to the Premises.

10. MATERIAL BREACH & CURE: GROUNDS

A. The existence of default or an uncured material breach shall be a basis for termination of the Agreement. Upon discovery of a default or a material breach, the party who has committed the breach shall have thirty (30) calendar days in which to make a good faith effort to contest or cure the default or breach from the time notice of the default or breach is transmitted to that party in accordance with the notice provisions of section 22 of this Agreement. If the breaching party has not cured the alleged breach at the end of the notice period, the other party may terminate this Agreement by giving the other party at least thirty (30) days written notice of termination in accordance with section 22.

B. The following shall be grounds of default or material breach entitling the County to terminate the Agreement:

- (1) Failure to maintain the track, right-of-way, bridges and structures, and signals as required in section 6;
- (2) Failure to secure required federal operating authority;
- (3) Conducting train operations in a manner deemed unsafe or hazardous by a state or federal agency having jurisdiction or deemed unsafe or hazardous under customary industry practices;
- (4) Failure to keep records or provide the County with access to the Line or records as provided in Section 13;
- (5) Failure to market the Line in accordance with the requirements of Section 4.C;
- (6) Failure to provide service upon reasonable demand as defined in the Business and Operating Plan;
- (7) Committing acts or allowing others to commit acts on the right of way which would be deemed a violation of state or federal environmental laws, failure to remove promptly hazardous substances from the right of way, or failure to eliminate promptly an environmental hazard or emission that would be deemed a violation of state or federal environmental laws;

- (8) Failure to report and pay promptly all compensation due the County;
- (9) Failure to maintain insurance as required by Section 8;
- (10) Failure to pay all taxes other than property taxes during the first five years of operation, and utilities as required by Section 9, unless contested;
- (11) Any assignment, mortgage, hypothecation, or transfer of this Agreement or the rights created by it in violation of Section 18;
- (12) Exercising as its own any property rights reserved by the State or the County; and
- (13) Using or permitting others to use the property for an illegal purpose.

11. COMPLIANCE WITH GOVERNING LAW

M&E shall comply with all laws, statutes, ordinances, rules, orders, regulations and requirements of the pertinent federal, state and local agencies and courts that are applicable to the Premises and railroad lines generally. M&E shall not use or permit the Premises to be used for any illegal purposes, conduct its operations for any illegal purposes, conduct operations in an unsafe or hazardous manner, or intentionally cause or allow another to place hazardous substances on the Premises or discharge hazardous substances into the air. Notwithstanding this provision, M&E may transport hazardous commodities or freight pursuant to federal regulation.

12. REQUIRED RECORDKEEPING: ACCESS TO RECORDS:  
PROPERTY INSPECTION

M&E shall prepare and file all reports, returns, and information required in connection with its operation of the Premises by any and all federal, state and local governmental regulatory and taxing authorities with jurisdiction over the Premises.

M&E shall submit to the County: (1) its annual financial report prepared and signed by its accountant for operations conducted over the Premises, (2) a detailed written quarterly report on all rail traffic handled on the Premises; and (3) an annual written report on its efforts to increase freight traffic handled on the Line.

M&E shall furnish the County any and all reports generated or issued which pertain to the Premises within 48 hours of M&E's receipt of such materials. M&E shall within 48 hours of its receipt provide the County any and all reports pertaining to the physical condition of the Premises issued by those federal and state agencies having regulatory jurisdiction over the track,

right of way, bridges and structures, and signals including, but not limited to, the STB, NJDOT, FRA, the United States Environmental Protection Agency, and the New Jersey Department of Environmental Protection. M&E agrees to provide the County with written quarterly and annual reports detailing the accounting of revenues and expenses generated in the operation of the Premises, as well as the number and type of car loads handled for each customer. M&E shall utilize generally accepted accounting procedures for recording said revenues and expenses.

M&E shall also be responsible to provide to the County a quarterly Maintenance Report that outlines all maintenance and inspections completed during the previous quarter year.

The County reserves the right to audit M&E's statements, and M&E agrees to disclose its records for auditing purposes.

The County, its agents, or representatives shall have the right to enter upon and inspect the Premises and M&E's business records applicable to the Line at any time during normal business hours subject to the County providing three business days' advance notice.

The County shall also have the right to conduct an inspection of any train or rail car at no cost to the County.

M&E shall indemnify and hold the County harmless against any penalty and/or damages resulting from its failure to file any such reports, returns, or information.

13. NOTICE OF CASUALTY

Other than for de minimus damage or injury, M&E shall give immediate notice to the County of any damage to property, death, personal injury, or other casualty occurring upon the Premises. Notice shall be delivered to the Union County Police Department within three (3) hours of the incident.

14. IMPROVEMENTS TO THE PREMISES

Except as otherwise provided in section 6 and 7, the M&E shall not make any alterations, additions, obstructions, encumbrances or improvement to the Premises without the prior written consent of the County, which consent shall not be unreasonably withheld.

Additions and improvements made by the County to the Premises shall become the property of the State upon termination of this Agreement except for such additions and

improvements which, subject to prior written Agreement of the parties, may be easily removed from the Premises without causing any damage thereto.

15. LIMITATIONS ON NON-OPERATING REVENUE SOURCES

M&E shall not place nor permit to be placed any signs, structures, or other non-operating revenue sources of any kind upon or about the Premises without the prior written consent of the County which shall not be unreasonably withheld. Any non-operating revenue sources such as signs and structures permitted by the County shall at all times conform to all applicable municipal ordinances or other laws or regulations. Notwithstanding the foregoing, M&E may without the consent of the County place and maintain such signs that are necessary for the safe operation of railroad freight services or to the operation of grade crossings, bridges, and other facilities on the Premises. M&E shall not enter into any agreement for access or use of the Line or any sort of license agreement or any other form of agreement with any third-party that exceeds five (5) years without prior written consent of the County, whose consent shall not be unreasonably withheld. However, at no time shall any agreement between the M&E and a third party have a term or duration for a period longer than the remaining term of M&E's Agreement with the County.

16. ALLOCATION OF LIABILITY: INDEMNIFICATION

Liability for death, personal injury, or property damage, including liability for any environmental claims within the meaning of applicable federal and state laws pertaining to the condition of the environment and transportation, use, or spillage of hazardous materials, shall be allocated between the parties as follows:

a. The County shall defend, indemnify, and hold harmless M&E against any and all liabilities, expenses, claims, or causes of action relating to conditions which occurred before the commencement of this Agreement or after its termination.

b. Except where the sole proximate cause of such liability, expense, claim, or cause of action is the negligence of the State and/or the County and/or parties on or about the Premises pursuant to access agreements or licenses granted third parties by the State and/or the County or as a result of property rights reserved by the State and/or County, M&E will defend, indemnify, and hold harmless the County and its officers, agents, employees, successors, and assigns against



any and all liabilities, expenses, claims, or causes of action for: (1) injury to or death of any person occurring on or about the Premises during the term of this Agreement; and (2) the loss of or damage to any property whatsoever, including, but not limited to any property whatsoever, including, but not limited to, the property covered by this Agreement where such injury, death, loss, or damage is caused by, arises out of, results from, or is incident to (A) the condition or existence of the property covered by this Agreement (except that M&E will not defend, indemnify, and hold harmless the County for any loss or damage to the Premises due to an Act of God) or (B) actions of M&E and its officers, agents, employees, successors, and assigns upon the property.

c. Notwithstanding the provisions of paragraph (b), M&E will defend, indemnify, and hold harmless the County and its officers, agents, employees, successors, and assigns against any and all liabilities, expenses, claims, or causes of action, including attorneys fees, arising from M&E's violation of or from its failure to comply with any provisions of this Agreement, regardless of whether the negligence of the County, its officers, agents, or employees, and regardless of degree, contributes thereto.

d. M&E shall defend, indemnify, and hold harmless the County and the State and their officers, employees, agents, successors or assigns from all suits and actions of any kind or character that may be brought or instituted by any subcontractor, or laborer who has performed work or furnished materials for or upon the Premises, or for any claim or amount recovered from any infringement of patent, trademark, or copyright.

e. M&E shall be responsible for and shall defend, indemnify, and hold the County harmless for the actions of any parties who obtained rights under easements, licensing, and crossing rights granted by it.

#### 17. NON-ASSIGNABILITY

M&E shall not assign, mortgage, or hypothecate this Agreement nor permit the Premises to be occupied or used for any purpose other than those uses contemplated herein. Moreover, M&E's shareholders or management may not transfer stock or management control of M&E to persons who do not constitute existing M&E management during the term of this Agreement. Notwithstanding these provisions, M&E's shareholders and management may assign this Agreement or transfer control of M&E upon the County's written consent, which shall not be

unreasonably withheld. Moreover, M&E may grant trackage rights, occupancy rights, licenses, or easements to third parties to the extent permitted by this Agreement.

18. WAIVER

The failure of the County or the M&E to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be considered as a waiver of any legal rights or claims. Nothing contained in this Agreement shall be deemed in derogation of any right or remedy that the County or M&E may have at law or equity.

19. DEFAULT BY M&E: TERMINATION

In the event that there should occur any default or uncured material breach, in accordance with section 10 of this Agreement, on the part of M&E in the performance of any terms, conditions, or covenants contained herein, which default results in the disruption of the railroad services as provided for in this Agreement, or if M&E shall file a petition in any Bankruptcy Court of the United States, or make an assignment for the benefit of creditors, or if this Agreement shall pass to another party by virtue of any court proceeding or operation of law, or be placed in receivership, or take advantage of an Insolvency Act, then the County may immediately terminate this Agreement and take possession of the Premises and any improvements thereon. The County may, upon taking such possession, obtain the services intended herein from any other party.

20. RETURN OF THE PREMISES

A. *By Termination*

Upon receiving notice of termination, M&E shall peacefully surrender possession of the Premises, promptly removing all of its property and leaving the Premises in the same physical condition as it was at the completion of the rehabilitation program or any additional improvements agreed upon between the parties, normal wear and tear excepted. In addition, M&E shall provide notice of termination to all customers on the line and connecting railroads and shall follow the procedures of 49 CFR 1150.50 for notice to customers to the extent not inconsistent with this Agreement.

B. *End of the Agreement*

Upon the end of the Agreement term, M&E shall return the Premises to the County in the same physical condition as it was at the completion of the rehabilitation program or any additional improvements agreed upon between the parties, normal wear and tear excepted. However, at the end of the Agreement term or upon termination of this Agreement, M&E may be held financially responsible to the County if it has failed to maintain any improvements to the Premises as required to achieve and maintain the track to an FRA Class II standard pursuant to Section 6 herein. Financial responsibility shall be limited to the amount necessary for restoration of the Line or any portion thereof to that standard.

21. EMINENT DOMAIN AND CONDEMNATION

If at any time during the term of this Agreement the Premises or any part thereof or any interest therein shall be taken under eminent domain or condemnation, or if a suit or other action shall be instituted for the taking or condemnation of the Premises to a governmental or other public authority, agency, or body then this Agreement at the option of M&E may terminate immediately.

22. NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. This section shall not be construed as waiving proper service of process. Notice to each party will be to the following:

COUNTY OF UNION:

County of Union

Union County Administration Building

Elizabethtown Plaza

Elizabeth, NJ 07207

MORRISTOWN AND ERIE:

RAILWAY INC.:

Morristown & Erie Railway Inc.

49 Abbett Avenue

Morristown, NJ 07960

In addition to the notices required to be in writing as described above, all communications, either oral or written, from M&E to the County will be directed exclusively to the Division of Policy and Planning in the Department of Economic Development.

23. SECTION AND PARAGRAPH HEADINGS

Section and paragraph heading in this Agreement are for ease of reference only and shall have no bearing on the construction or interpretation of this Agreement.

24. ENTIRE AGREEMENT

This Agreement and the exhibits and attachments set forth all the covenants, provisions, agreements, conditions and understandings between the parties and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. No modification or addition to this Agreement shall be binding or effective unless executed in writing as an amendment to this instrument and signed by the parties.

25. PARTIAL ILLEGALITY

If any provision of this Agreement is held to be illegal, the remainder of the Agreement shall not be affected thereby.

26. GOVERNING LAW

This Agreement and all rights of the parties thereunder shall be governed by the laws of the State of New Jersey.

27. DISPUTE RESOLUTION


All disputes between the parties shall be resolved through arbitration pursuant to the commercial arbitration rules of the American Arbitration Association.

28. FORCE MAJEURE

M&E shall have no obligation to operate over any portion of the Premises as to which it is prevented or hindered from operating by Acts of God, public authority, strikes, riots, labor disputes, orders of the STB, or any cause beyond its control; PROVIDED, HOWEVER, M&E shall use its best efforts to take whatever action is necessary or appropriate to be able to resume operations. In the event of damage or destruction caused by an Act of God, the parties shall develop a plan to commence all necessary repairs and shall pursue these repairs with reasonable diligence.

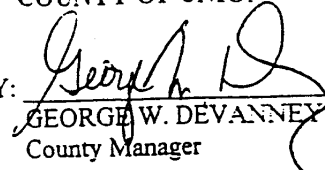
IN WITNESS WHEREOF, the parties hereto have  
year written on page one of this Agreement.

ATTEST:

  
M. ELIZABETH GENIEVICH  
Clerk of the Board

COUNTY OF UNION

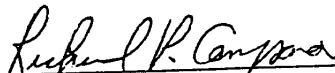
BY:

  
GEORGE W. DEVANNEY  
County Manager

APPROVED AS TO FORM:

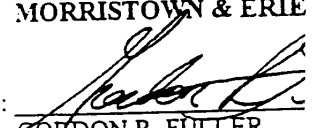
  
JEREMIAH D. DWYER, ESQ.  
County Counsel

ATTEST:

  
RICHARD P. CAMPANA  
Superintendent

MORRISTOWN & ERIE

BY:

  
GORDON R. FULLER  
Chief Operating Officer

3/27/2002

WHEREAS, the State of New Jersey ("State"), pursuant to the New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act of 1989, acquired the railroad right-of-ways formerly known as the Staten Island Railroad and the Rahway Valley Railroad; and

WHEREAS, by virtue of Freeholder Resolution 813-2000, an Agreement dated June 23, 2000 ("Agreement") was entered into between the County of Union ("County") and the New Jersey Department of Transportation ("NJDOT"), whereby the State granted the County a right of entry upon the railroad property for the purposes of rehabilitating the railroad, track, structures, and right-of-ways for the subsequent establishment of rail service; and

WHEREAS, Resolution 574-2001 of the Union County Board of Chosen Freeholders awarded a contract, as "Extraordinary, Unspecifiable Services", to Morristown & Erie Railway, Inc. (M&E) to provide services as the third-party operator of these rail lines; and

WHEREAS, pursuant to Resolution 574-2001, an Operating Agreement has been developed and negotiated with the M&E to provide high quality personalized service in the operation of the rail lines; and

WHEREAS, the Operating Agreement with the M&E provides for the staged reconstruction and reactivation of the former Staten Island and Rahway Valley Railroads in Union County; and

WHEREAS, the Operating Agreement provides for a unique revenue sharing structure between the parties, pursuant to Resolution 574-2001, that will support the County of Union in furtherance of its comprehensive economic development program.

NOW, THEREFORE, BE IT RESOLVED that the Union County Board of Chosen Freeholders hereby approves the Operating Agreement between the County of Union and the Morristown & Erie Railway, Inc.

BE IT FURTHER RESOLVED that this Board does hereby authorize the County Manager to execute any and all documents necessary to effectuate the Operating Agreement.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the New Jersey Department of Transportation.

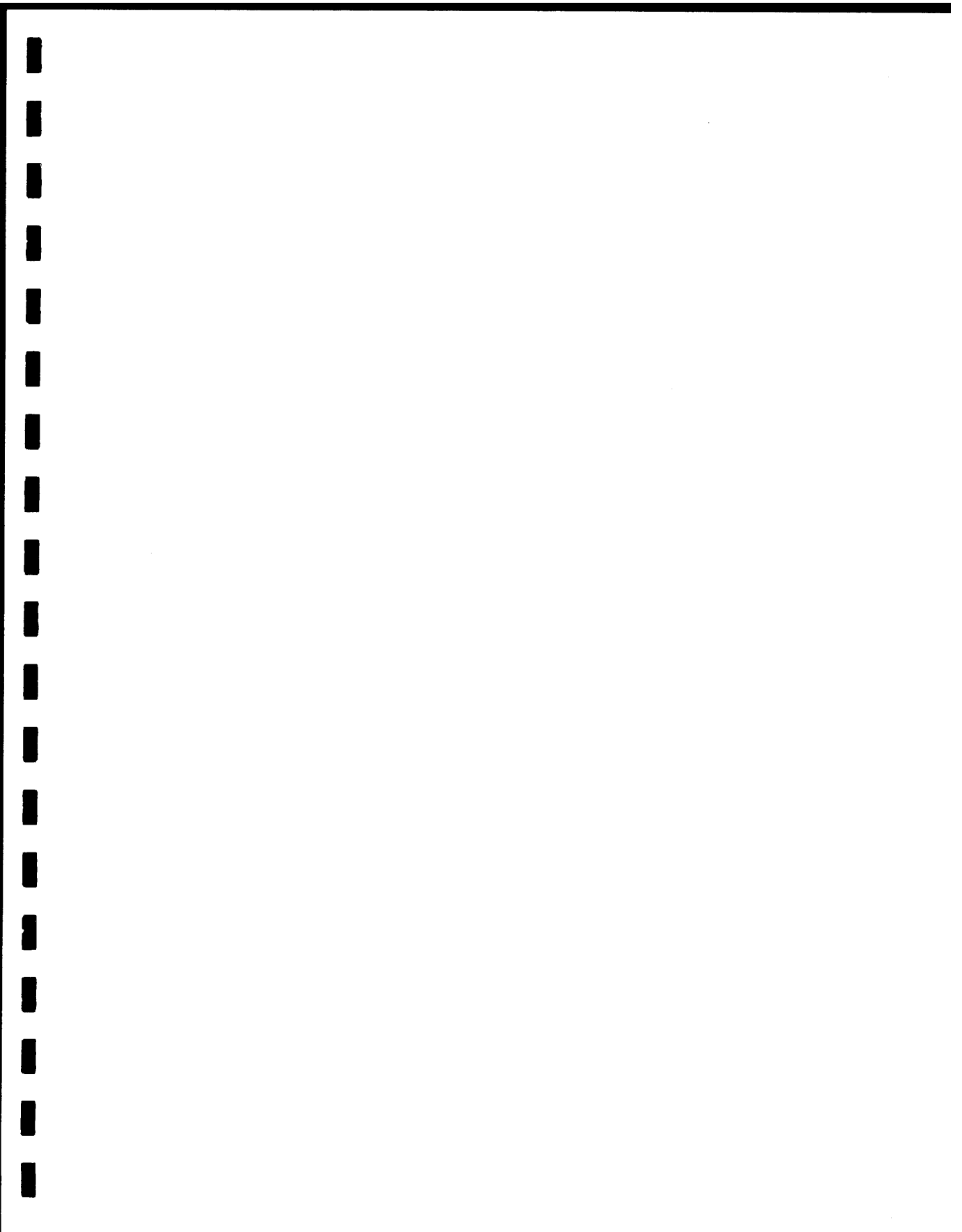
3-25-02

RECORD OF VOTE															
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res	Sec	NP
ESTRADA	X							SCUTARI	X						
HOLMES	X							SULLIVAN	X						
MIRABELLA	X					X		RUOTOLO VICE-CHAIRMAN							X
PROCTOR	X							MINGO CHAIRMAN	X				X		
SCANLON	X														

APPROVED AS TO FORM  
COUNTY ATTORNEY

I hereby certify the above to be a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the date above mentioned.

*M. E. Harrison*



## UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

RESOLUTION NO. 902-02

DATE:  
8/22/2002

WHEREAS, the County of Union entered into an Agreement between the County of Union and the Morristown and Erie Railway dated May 9, 2002; and

WHEREAS, Phase I provides that "M&E shall rehabilitate and restore to regular operation The Staten Island Railroad from MP 4.7 immediately west of the NJ Turnpike in Linden to MP 2.3 immediately east of St. Georges Avenue in Linden"; and

WHEREAS, Phase II provides that "M&E shall rehabilitate and restore to regular operation The Staten Island Railroad from MP 2.3 immediately east of St. Georges Avenue in Linden to MP 0 at the junction of the Staten Island Railroad and the NJ Transit Raritan Valley Line in Cranford, exclusive of the portion of the line immediately west of MP 2.3 to MP .58 at the municipal boundary of the Borough of Roselle and the Township of Cranford. This portion of the rail line shall be rehabilitated only upon the mutual consent of the parties to this Agreement, who will continue to develop an appropriate timeline for such rehabilitation."; and

WHEREAS, the rail line moves through certain municipalities, the County of Union shall not approve the usage of the rail line right-of-way unless and until the affected municipalities each pass a governing body resolution consenting to such usage.

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders of the County of Union that it hereby desired to clarify aforesaid conditions.

BE IT FURTHER RESOLVED that this Resolution is a codification of all prior policies.

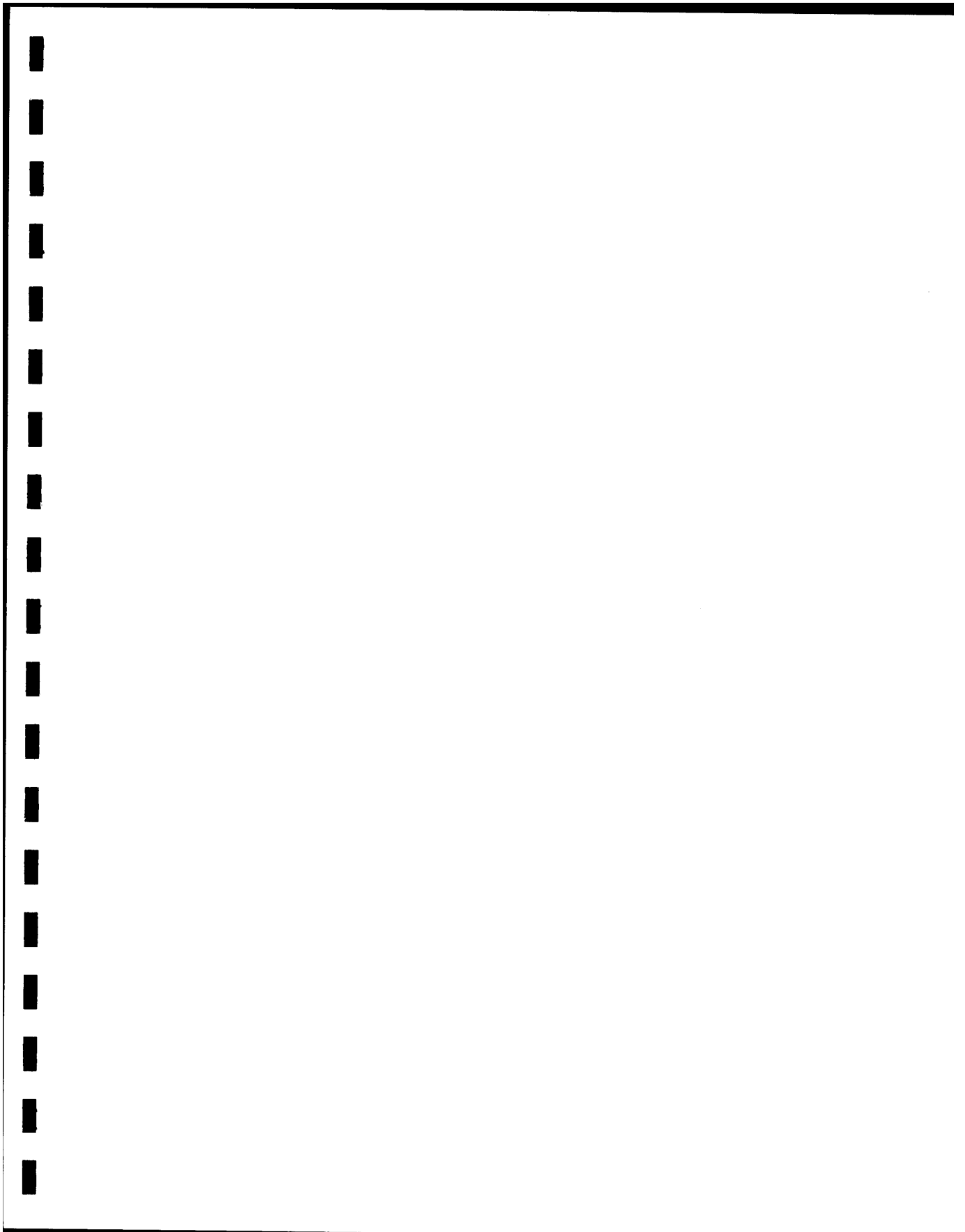
*By Authority of Board*  
*James M. Board*  
*Chairman*

RECORD OF VOTE															
FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Res.	Sec	NP
ESTRADA	X						X	SCUTARI	X						
HOLMES	X							SULLIVAN							X
MIRABELLA							X	RUOTOLO VICE-CHAIRMAN	X				X		
PROCTOR	X							MINGO CHAIRMAN	X						
SCANLON	X														

APPROVED AS TO FORM <i>[Signature]</i> COUNTY ATTORNEY	I hereby certify the above to be a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Union on the date above mentioned. <i>[Signature]</i> CLERK
--	--







# COUNTY OF UNION

OFFICE OF NICHOLAS P. SCUTARI  
Freeholder

BOARD OF  
CHOSEN FREEHOLDERS

LEWIS MINGO, JR.  
Chairman

MARY P. RUOTOLO  
Vice-Chairman

ANGEL G. ESTRADA

CHESTER HOLMES

ALEXANDER MIRABELLA

RICK PROCTOR

DEBORAH P. SCANLON

NICHOLAS P. SCUTARI

DANIEL P. SULLIVAN

GEORGE W. DEVANNEY  
County Manager

M. ELIZABETH GENIEVICH,  
R.M.C., M.P.A.  
Deputy County Manager/  
Director of Administrative Services

ANNETTE QUIJANO, ESQ.  
Clerk of the Board

JEREMIAH D. O'DWYER, ESQ.  
County Counsel

September 19, 2002

Dear Resident:

By now you may have noticed the cleaning and clearing of rail lines in your community. Please allow me to reassure you the clearing of these lines is strictly for health and public safety reasons, not for reactivation.

My colleague, Freeholder Al Mirabella of Roselle Park, has met with municipal officials from your community on this matter. Your Councilwoman, Melanie Selk, has met with our County Manager and testified before our Freeholder Board on this issue. They have both made it absolutely clear the borough is against any reactivation of these lines. *Therefore, there is no intention of starting any rail service along these lines in your community.*

The Morristown & Erie Railway Inc. (M&E), the railroad operator under contract with the County, has been authorized to clean and clear the right-of-way in your municipality in order to address safety and public health concerns. This is merely a maintenance procedure. The work requires use of railroad and truck equipment, and minor track work needs to be done to accommodate this procedure. As part of outreach to the municipalities, a more extensive landscaping plan will be discussed in the near future.

If you have any further questions about this issue, please feel free to contact the Union County Department of Economic Development at (908) 527-4086.

Thanks for your attention to this matter.

Sincerely,

*Nicholas Scutari*  
Nicholas Scutari  
Union County Freeholder

ADMINISTRATION BUILDING

Elizabethtown Plaza Elizabeth, NJ 07207 (908) 527-4109 fax (908) 289-4143 [www.unioncountynj.org](http://www.unioncountynj.org)

We're Connected to You



# COUNTY OF UNION

OFFICE OF THE COUNTY MANAGER

*George W. Devanney, County Manager*

BOROUGH OF KENILWORTH

August 5, 2002

AUG 07 2002

**RECEIVED**

**BOARD OF  
CHOSEN FREEHOLDERS**

LEWIS MINGO, JR.  
*Chairman*

MARY P. RUOTOLO  
*Vice-Chairman*

ANGEL G. ESTRADA

CHESTER HOLMES

ALEXANDER MIRABELLA

RICK PROCTOR

DEBORAH P. SCANLON

NICHOLAS P. SCUTARI

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*County Manager*

M. ELIZABETH GENIEVICH,  
R.M.C., M.P.A.  
*Deputy County Manager/  
Director of Administrative Services*

ANNETTE QUIJANO, ESQ.  
*Clerk of the Board*

JEREMIAH D. O'DWYER, ESQ.  
*County Counsel*

Honorable Michael Tripodi  
Mayor, Borough of Kenilworth  
567 Boulevard  
Kenilworth, NJ 07033

RE: Letter of June 27, 2002 from Morristown & Erie Railway, Inc.

Dear Mayor Tripodi:

By this correspondence, I wish to clarify the above referenced letter which you received from Mr. Gordon R. Fuller, Chief Operating Officer of the Morristown & Erie Railway, Inc. (M&E) with regard to the reactivation and rehabilitation of the former Staten Island and Rahway Valley Railroads.

Mr. Fuller's letter indicates that rehabilitation and operation of the rail line in your community is imminent. This is not the case. At this time, the M&E has been authorized to clean and clear the right-of-way in your municipality in order to address safety and public health concerns.

In this regard, we encourage you to work with the County and the M&E to address long standing issues relating to maintenance of the railroad right-of-way. The County and the M&E are liable for any harm arising from a neglected right-of-way.

The M&E has begun an extensive brush cutting and clearing of the right-of-way. This work requires the use of railroad and truck equipment. Minor track work needs to be done to accommodate this equipment. This activity may give the appearance that rail service has been restored. However, this is a routine maintenance procedure and should not be viewed as a precursor to the start up of rail service.

Clearing and cleaning the right of way will also include the trimming of extensive growth and the removal of trash. In addition, rodent and insect control measures will be initiated. As noted in the letter, sufficient screening of the railroad right-of-way will remain. As part of the outreach to the municipalities, a more extensive landscaping plan will be discussed at that time.

**FILE COPY**

ADMINISTRATION BUILDING

Elizabethtown Plaza Elizabeth, NJ 07207 (908) 527-4200 fax (908) 289-0180 [www.unioncountynj.org](http://www.unioncountynj.org)

*We're Connected to You*

The Staten Island and Rahway Valley Rail Lines were abandoned by their former owner and purchased by the State under the 1989 Bridge and Railroad Right-of-way Preservation Act. The County, in order to maintain control over future use of these rights-of-way requested and was granted jurisdiction by the State to oversee the rehabilitation and any future operation of these rail lines by contracting with a local rail operator.

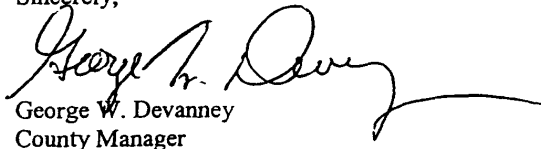
The County of Union entered into a contract with the M&E on May 9, 2002 to provide for the rehabilitation and maintenance of these rail lines and to develop a staged operating plan to support the marketing and distribution needs of Tosco Refinery's Polypropylene Facility.

However, the contract with M&E clearly states that rail operations and rehabilitation will not commence until authorized by the County and only when municipal issues and concerns have been addressed and approved by your governing body with regard to this project.

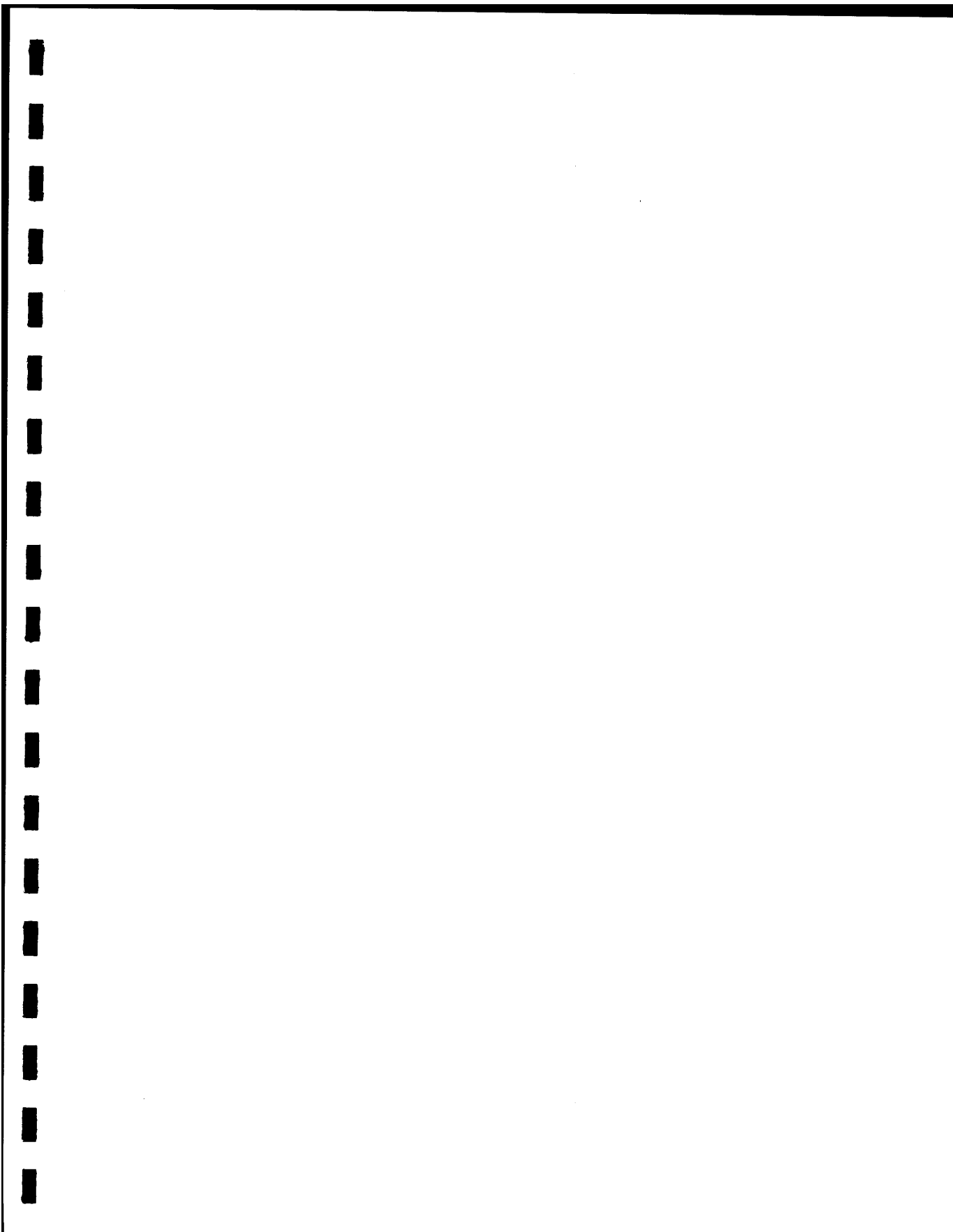
Again, let me reiterate that this project only goes forward to the rehabilitation and reactivation stage with the concurrence of both the municipality and the County. Mr. Fuller's letter anticipates having achieved this stage of the project. This will only be achieved pursuant to agreement among all parties.

Any future concerns or questions regarding this project should be addressed directly to Mr. James Daley, Director, Union County Department of Economic Development at (908) 659-7412.

Sincerely,

  
George W. Devanney  
County Manager

Cc: James Daley, Director, Department of Economic Development  
Gordon Fuller, Chief Operating Officer, M&E Railway, Inc.  
G. Bruce Connor, County Engineer



**FACTS ABOUT THE REACTIVATION OF THE  
MORRISTOWN & ERIE RAILWAY, INC.**

**1991** – Segments of the Rahway Valley Railroad and Staten Island Railroad in the Union County municipalities of Linden, Cranford, Roselle, Roselle Park, Kenilworth, Union, Springfield and Summit are abandoned. (Source: **June 23, 2000 Agreement between New Jersey Department of Transportation and County of Union.**)

**June 23, 2000** – In response to the request of the County of Union to revitalize the abandoned railroad property, the New Jersey Department of Transportation signs an agreement with the County government to rehabilitate and reactivate the abandoned railroad property.

**May 9, 2002** – After initiating a search for a railroad operator, the County of Union enters into an agreement with the Morristown & Erie Railway, Inc. ("M & E") to rehabilitate the abandoned railroad property and provide railroad service in four phases. Phases II, III and IV of the rail service were made contingent upon and subject to the mutual consent of the County of Union and M & E. Within thirty (30) days of the signing of the agreement, the County and M & E were contractually obligated to establish a public outreach program to the municipalities identified in Phases II, III and IV. The public outreach was never undertaken in accordance with the terms of the agreement. (Source: **May 9, 2002 Agreement between Morristown & Erie Railway, Inc. and County of Union.**)

**June 5, 2002** – M & E files an application with the Federal Surface Transportation Board for a modified certificate of public convenience and necessity to operate certain railroad lines. The decision of the Surface Transportation Board references that "M & E will not proceed with the rehabilitation of the Phase III lines and the commencement of rail services until it receives the written concurrence of the County." (Source: **Surface Transportation Decision Summary for Morristown & Erie Railway, Inc. Modified Rail certificate dated June 27, 2002, Docket No. FD 34054.**)

**August 5, 2002** – Letter from Union County Manager George W. Devanney forwarded to all of the Mayors in the affected municipalities indicating that "M & E has been authorized to clean and clear the right-of-way in your municipality in order to address safety and public health concerns." Mr. Devanney further advises that rail operations will not commence until municipal issues and concerns are addressed and approved by each governing body.

**August 22, 2002** – The Union County Board of Chosen Freeholders adopts Resolution 902-02 clarifying the Freeholders position that the County "shall not approve the usage of the rail line right-of-way unless and until the affected municipalities each pass a governing body resolution consenting to such usage."

**August 25, 2002** – After the August 22, 2002 Freeholders Meeting, the County's position was once again stated publicly in The Star-Ledger. It was reported as follows: "County officials said the rail traffic cannot proceed through any town without municipal approval." (Source: **"Rail line reactivation raises alarm in county," Sunday Star-Ledger, August 25, 2002.**)

**August 29, 2002** – Another newspaper account of the August 22, 2002 Freeholders Meeting verified the County's position regarding the reactivation of the railroad. "Freeholders adopted a resolution clarifying the county's agreement with the Morristown and Erie Railway, which would require affected towns to give their consent to the project locally before any of the stages of rehabilitation continue." (Source: "Municipalities would have to sign off on railroad project," **Union Leader**, August 29, 2002.)

**September 19, 2002** – The Borough of Roselle Park adopts Resolution opposing the reactivation of the abandoned railroad.

**September 24, 2002** – The Township of Springfield adopts Resolution opposing the reactivation of the abandoned railroad.

**September 25, 2002** – The Borough of Kenilworth adopts Resolution opposing the reactivation of the abandoned railroad.

**October 2, 2002** – Letter from Freeholder Nicholas Scutarf advising affected residents that "There is no intention of starting any rail service along these lines in your community."

**October 3, 2002** – Letter from Mayor Michael A. Tripodi to the Union County Board of Chosen Freeholders requesting written confirmation that the County will not approve the railroad reactivation since the Kenilworth governing body passed a Resolution opposing the railroad reactivation.

**October 8, 2002** – In spite of claims made by M & E that the railway will be reactivated, it was reported that the County still maintained its position against reactivation of the railroad. "Sebastian D'Elia, spokesman for the county administration, said the county still has no intention of reactivating the tracks in Roselle, Roselle Park, Kenilworth and Springfield." (Source: "Residents want answers on freight rail plan," **The Star-Ledger**, October 8, 2002.)

**October 10, 2002** – "We're by your side, we'll fight." Statement made by Union County Manager George W. Devanney at the Union County Board of Chosen Freeholders Meeting on October 10, 2002 in response to residents in attendance at the meeting opposing the reactivation of the railroad. (Source: "County reaffirms rail position," **Echo Leader**, October 17, 2002.)

**October 15, 2002** – The City of Summit adopts Resolution opposing the reactivation of the abandoned railroad.

**October 23, 2002** – Although M & E was working towards reactivating the old Staten Island Railroad between Linden and Cranford, the County stated emphatically that it would not allow reactivation of the railroad in the municipalities that opposed the reactivation. Further, the County administration committed to legal action to defend the rights of the affected municipalities. County Manager George Devanney this week reiterated a pledge by freeholders to go to court if necessary to stop freight trains from operating on the tracks." Moreover, the County Manager was quoted as saying, "When are people going to start taking 'no' for an

answer? We're trying to tell residents that we're on their side." (Source: "County says it intends to derail project to renew freight service," The Star-Ledger, October 23, 2002.)

**October 28, 2002** – Letter from Mayor Michael A. Tripodi and other Mayors to Union County Manager George W. Devanney stating that M & E is proceeding towards railroad reactivation by leasing property to businesses along the rail lines and installing permanent railroad tracks. The letters also requested that the County deny its consent to the reaction of the rail lines in Phases II, III and IV.

**November 15, 2002** – Letter from Union County Manager George W. Devanney to Mayor Michael A. Tripodi and other Mayors indicating, "that there is no situation that required resolution with the Morristown and Erie."

**November 21, 2002** – "The county won't do anything without the okay from the towns. If they don't want it it will not happen." Statement made by Freeholder Deborah Scanlon regarding the potential reactivation of the railroad. (Source: "Towns opposing RR activation," Union Leader, November 21, 2002.)

**May 11, 2003** – After many months of supporting the municipalities' opposition to the railroad reactivation, the County begins to waver in its previously established position and ignore local officials' requests for information. In response to the County's failure to meet with local officials to discuss the potential reactivation of the railroad, Mayor Michael A. Tripodi stated, "The last couple of months we've been trying to arrange for a closed-door meeting with the county. We've heard no response. They blew us off. So we will look to retain legal counsel." In the same newspaper article, Union County Manager George W. Devanney offered 'no comment' because the County was engaged in ongoing legal negotiations. (Source: "Towns oppose plans to revive rail line," Sunday Star-Ledger, May 11, 2003.)

**May 15, 2003** – Residents and local officials from the affected municipalities continued to meet and communicate about the railroad although the County continued its silence. "County Manager George Devanney said there has not been anything new to communicate about the rail line. 'They know as much about the rail line as I do.' He said this has been under review by the county's legal counsel." (Source: "Towns to draft impact statement on rail line," Kenilworth Leader, May 15, 2003.)

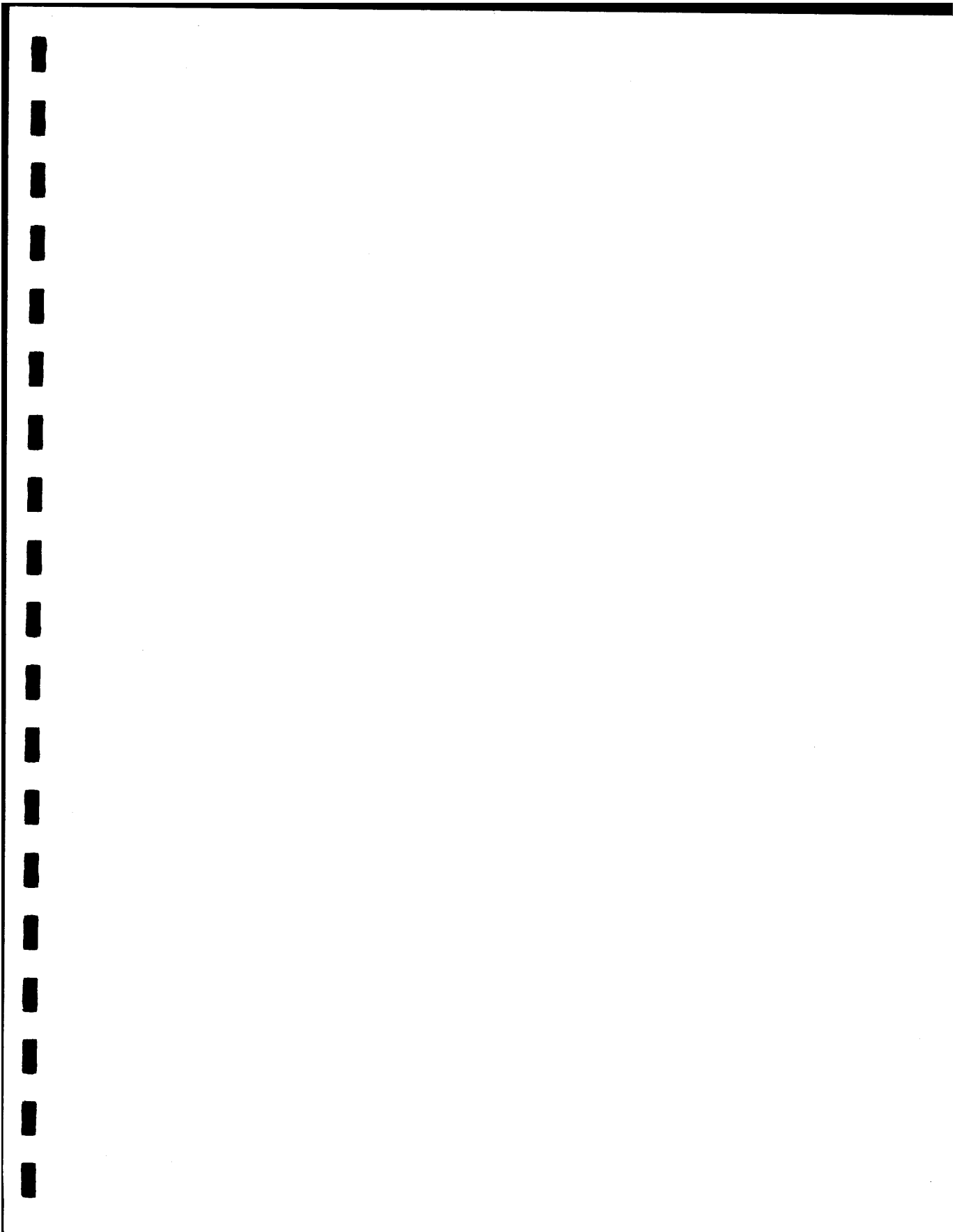
**May 29, 2003** – The lack of communication and silence by the County continues to stonewall the efforts by local residents who are opposed to the reactivation of the railroad. Union County Manager was reported as saying, "We understand the concerns of the residents and as a result of these concerns, we have directed our legal counsel to take a look at the contract and let the county know what we have. Because it is with the lawyers, I cannot comment further at this time." (Source: "Legal agreement mobilizes city's railroad opposition," Summit Observer, May 29, 2003.)

**June 5, 2003** – Despite objections raised by the Mayors of Kenilworth, Springfield and Roselle Park and numerous residents, the Union County Board of Chosen Freeholders changes their previous stated position and votes in the affirmative to adopt Resolution 633-2003, which

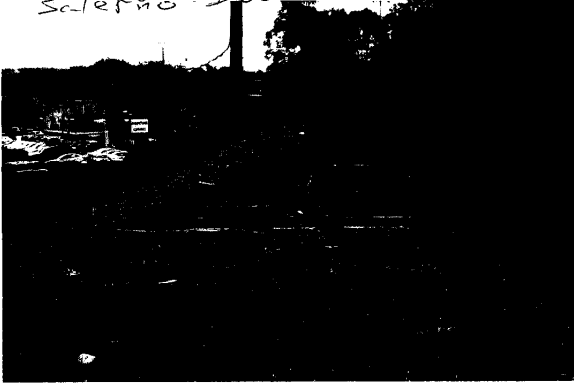


authorizes the County Manager to implement subsequent Phases II, III and IV of the Operating Agreement between the Morristown & Erie Railway, Inc. and the County of Union. **(Source: Union County Board of Chosen Freeholders Special Meeting on June 5, 2003.)**

**June 27, 2003** – Gordon R. Fuller, Chief Operating Officer of M & E forwards a correspondence to Mayors of all affected municipalities indicating that M & E intends to rehabilitate and operate the rail service in each of the communities.



Abandoned RR tracks  
Looking over Broad St from  
Salerno Duane



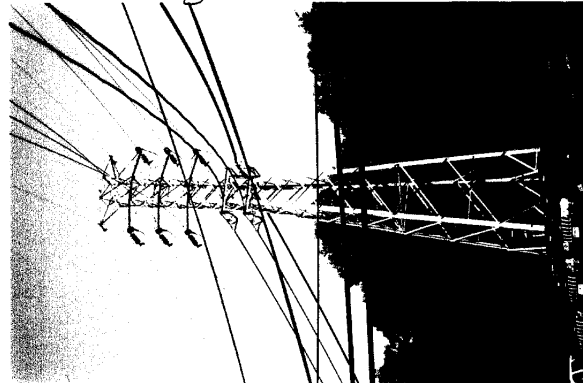
Close up of tracks  
see picture to left



RR support over Shunpike Rd  
Looking towards Summit



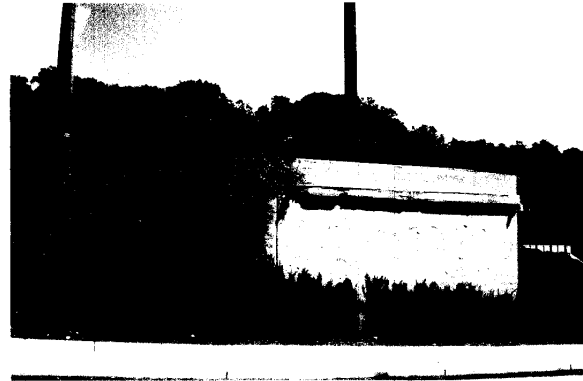
Power Transmission Lines  
over NJ Transit Line  
Looking From Broad St



Support for RR trestle over  
Broad St taken from Salerno-  
Duane side



Support for RR trestle looking  
towards Salerno Duane



Railroad Site Inspection

September 27, 2003

Completed by John DeSocio, Louis DeSocio, Anton Evers, and Robert Sheehan

Cover Page

Notes

The right of way is built on a man made embankment that is fifteen or so feet over the roadway starting from the Shunpike Road/Orchard Street crossing and ending up near the New Jersey Transit lines behind the Salerno-Duane car dealership and near parking garage on Broad Street – all running through East Summit.

The entire embankment will have to be reconstructed through East Summit and the right of way will have to be made wider. This route from Shunpike Road to the left side of Broad Street (facing uptown) is exclusively residential.

None of the tracks, support beams, or the railroad bed can be salvaged along this route. In addition all concrete support columns, two each on Orchard Street, Russell Place, Ashwood Avenue, Morris Avenue, and Broad Street may have to be rebuilt.

The bridges over Orchard Street/Shunpike Road (Springfield), Ashwood Avenue, and Morris Avenue must be rebuilt. In our opinion the two remaining bridges over Russell Place and Ashwood Avenue will have to be torn down and replaced.

East Summit, along the train route is densely populated, almost exclusively residential, with many streets being narrow, has a considerable number of cars parked on street, except from 1:00 AM to 6:00 AM. This could be an emergency services nightmare.

If we are correct in that the embankments, the railroad beds, the tracks, and all the bridges will have to be rebuilt from the ground up, and the rail beds would have to be widened, all the way from Shunpike to New Jersey Transit on Broad Street it could cost us, the taxpayers, twenty or so million dollars or more. A more accurate estimate could be provided by a professional engineering firm that would walk the tracks, as we did, and make their own evaluation. The whole route in East Summit is a disaster in terms of it's condition and age. Parts of this line may be over one hundred years old. Even when the line was in use, no one knows how well the operators maintained the tracks, the rails, the beds, the embankments, and the bridges. As it is, they have been neglected since the former operator ceased operations.

Safety

Most, if not all of the railroad bed running through Summit is on a narrow man made embankment. Prior to the restoration of freight train service a team of engineers will have to inspect the right of way, including the rail bed, the embankments, the ties, the rails, the supports for the railroad trestles, the trestles that are still standing, and the switches. In order to do this the right of way will have to be cleared of brush. As much, if not all, of this track is above grade, sometimes as high as fifteen feet or more off the ground, it will not be easy to perform this task. Some of the track runs through public land, County park land and County open space land, and some of it runs through private

property, people's back yards and commercial property, all with little or no access. We believe that the engineers will come to the same conclusion as that we have in that the embankments will have to be strengthened/reinforced and made wider, the rail bed will have to be redone, new ties and rails will have to be laid, the supports for all the trestles will require major overhauling/replacing, undoubtedly the three missing trestles will have to be replaced, the two existing trestles will have to undergo a major overhaul or replacing, and the switches, at least the one to New Jersey Transit, will have to be re-installed. Just the clearing of brush to inspect the rail bed will be a major project, tying up busy, well traveled streets, causing traffic delays, and devaluing the quality of life of those near or close to the tracks.

On a safety issue, if a derailment occurs, and no one can say that they do not happen for we have witnesses that recall a derailment over Ashwood Avenue, the cars that derail will end up in some locations, for example, Denman Place, on peoples homes. If the derailment occurs anywhere between Russell Place and Broad Street and the freight includes substances that are dangerous, corrosive, or hazardous, it will be next to impossible to get emergency vehicles to gain access to many of these sites. In such an incident, the haz-mat official will call for an evacuation of the area, which may be in a one-mile radius or more. This may prove to be difficult due to the narrowness of the streets in this area and that emergency vehicles may be blocking the escape routes. Due to the proximity of not only the homes and businesses along the route, the closeness of Briant Commons in Springfield, Briant Park, the Summit Recreation Center facilities, the Summit City Pool, and the Jefferson School pose other serious consideration depending on the nature of the derailment and the cargo it will be carrying.

Ashwood Avenue

September 27, 2003

The railroad bridge over Ashwood Avenue also appears that it must be torn down and replaced and it's concrete supports must be rebuilt. There are residential homes on either side of these tracks on both sides of the street about 50 yards from the right of way. If one were to draw parallel lines one hundred yards in either direction from the rails there are many more homes that would be in harms way in the event of an accident. Even without an accident, the homeowners' quality of life would be adversely impacted just with the railroad passing by from the vibration. This would also be true on each street along the route.

As one heads towards the Jefferson Elementary School one passes the Summit Community Pool. This pool is well off Ashwood Avenue and the left side (facing pool) is perhaps 150 yards from the right of way. When the pool is open, at any time of the day, there are hundreds of people at the pool. Jefferson School is right next to the pool with the left side rear of the school property is closer than the street side. Both complexes are about three tenths of a mile from the railroad line. There are hundreds of children attending Jefferson School and many of those who utilize the pool live down the area of the train route.

Note: The family living at 39 Ashwood Avenue, which is right alongside the tracks, recall a derailment in the past. Also, the gardener living a few doors down from the tracks recalls a night when a train derailed where he had to go up to the top of the trestle with jacks and timbers to assist getting a train back on track.

Ashwood Court

September 27, 2003

This street is populated by duplex, two family attached homes, all close to the railroad right of way. However, units numbers 24, 68, and 57 might be within 50 yards or less to the railroad right of way.

Briant Park (Union County Facility)

September 27, 2003

This park, is mostly situated in Summit, with some wooded rear areas in Springfield, is a major recreational facility, used by all, from infants to the elderly – there is an assisted living facility across the road on Springfield Avenue. The use of this facility will increase dramatically with the people from the new development going up, Briant Commons, off Springfield Avenue at East end of park. Also, once the Stephens-Miller property is developed, it will add additional visitors to use this park.

The park is presently mainly used by Summit and Springfield residents. The railroad right of way is relatively close to the property line on the East rear side. This is again a safety issue with children attempting to get to track line, to explore mostly, or play in surrounding wooded area, with nothing physical to prevent this from occurring.



Broad Street

September 27, 2003

The railroad trestle over Broad Street was also taken down for safety reasons some years ago. It is quite apparent that the concrete supports for the trestle require major repair work, perhaps even replacement. The utility lines on the right side facing towards the center of town must be raised, as would the rail bed as required by the current rules and regulations to allow trucks and emergency vehicles to pass under. On the uptown and on the downtown side of this trestle support are two car dealerships under the Salerno-Duane banner. The train would cross Broad Street curving around the top of Salerno-Duane's main dealership where it would connect to New Jersey Transit Line, below the Summit train station. The ties, rails, and switches are not there any longer. The switch point may require taking land from Salerno-Duane and encroachment on the uncovered portion of Summit's Broad Street parking garage depending on how the switch point to New Jersey Transit will be accomplished.

On the downtown side of this train support the track slopes steeply down to their General Motors truck and SUV dealership. Across the street on the downtown side at the corner of Broad Street and Denman Place is a commercial building, one of whose tenants is Overlook Hospital, where medical records are stored. The back of this building is literally yards from the railroad tracks. On the uptown side of this train trestle support is an apartment building that houses Overlook Hospital personnel.

During this construction, great care would have to be taken not to disturb the high-tension distribution towers and lines that cross Broad Street right over this right of way. In fact, we have noticed that along the tracks there are electric lines running along most of the right of way. Once the freight trains connect with the New Jersey Transit lines here, each of the neighborhoods (and their homes) will now be affected by the reactivation of freight service with the additional noise, vibration, and safety issues.

Celanese/Ticona Corporation, 86 Morris Avenue, Summit

September 27, 2003

Note: Our team was escorted, as it was necessary, by Richard Hanlon, Site Director at Celanese. Mr. Hanlon also provided us with copies of correspondence between himself and the County, Morristown and Erie Railroad and Senator Corzine. He also related a conversation he had with Gordon Fuller, Chief Operating Officer of the Morristown and Erie Railroad. We will provide copies of the letters to Mayor Long, Cindy Martin, and Summit's attorney, Barry Osmun. Mr. Osmun is the person who requested we do the impact study along the route of the railroad's right of way in Summit. Our study comprises a video with narration and this presentation with still pictures. This narration will also be copied and sent to Coalition Leaders in Kenilworth. The presentation will be used in the District Court in New Jersey as evidence in our lawsuit and a copy will go to the Coalition's Washington attorney for use with the Surface Transportation Board.

Celanese has some unique problems that occur at their site, which does not occur anywhere else in Summit. In no particular order of importance:

- Security from terrorist plot
- Opening and closing of gates at both ends of tracks to allow trains to pass through-again a safety issue
- Railroad right of way dissects their property, which creates major problems in managing the site, while maintaining high security standards, e. g.: who knows what could be stored or hidden in the trains' cargo, what if explosives were hidden in one of the cars carrying chemicals to be detonated by remote control. How could they protect their employees at this site.
- The entirety of the Summit Police Officers pistol range and a portion of their rifle range are located on Celanese property. (Both undoubtedly will require environmental cleanup – see our notes on this subject.)
- They are presently attempting to sell the property to a company, if possible, that would be in a related industry, e.g.: pharmaceutical. The threat of the reactivation of freight train service will have a negative impact on this twenty to thirty million-dollar 43-acre site.
- On the back of the Celanese site, about thirty or forty acres is some Union County property directly to the rear.
- Utility lines are too low in the right of way route that dissect the property.
- Newer buildings that were built since the railroad went out of business that were on the other side of the tracks will have to be raised or demolished.
- Train comes into Celanese property from just beyond Orchard Street and runs in two directions, one leg going to former Stephens-Miller property.
- Michigan Avenue is essentially a key evacuation route, if necessary for Celanese, however it also parallels the railroad right of way.
- Most of track has been pulled up; the right of way is essentially destroyed, etc.
- The railroad passage through and within the Celanese property would require an engineering impact evaluation, and in our judgment quite a bit of money to restore the right of way, meanwhile address the safety issues of all kinds.
- Gordon Fuller, COO of the M & E, told Richard Hanlon of Celanese about a year ago, the railroad would run from Staten Island, NY through Summit to Scranton,

PA. This fact, in our opinion, shows more deceit by the Freeholders for this meeting was well before the County went public about their going ahead with this project. Mr. Fuller told Mr. Hanlon that initially they would run only a few trains, with relatively few number of freight cars per week, and that the frequency and the number of cars per train would increase over a period of time.

Denman Place

September 27, 2003

The homes on left side of this street looking from Morris Avenue to Broad Street have the railroad right of way literally on top of rear of property lines. This is another street with small house lots. In addition, because of the height of the embankment here and on the other streets, emergency vehicles and personnel would have difficulty getting up the sometimes almost straight vertical embankment.

Fraternal Organizations

September 27, 2003

Knights of Columbus Springfield (on Summit/Springfield border) is located about 75 yards from the railroad right of way.

Italian American Civic Organization, 146 Morris Avenue, Summit, is located less than 50 yards from railroad line and homes to right of tracks are within 75 yards of the right of way.

## Henry Street

September 27, 2003

The rear yards of the houses on the right side of this street when facing towards Glenside Avenue abut the railroad right of way. In fact, there is one house with garages and a pool the rear yard of which is on the right of way. This is another street that is narrow, which may pose a difficulty in case of an emergency. The homes on the other side of Henry Street are not much beyond one hundred yards from the railroad. The homes at the Ashwood Avenue end of Henry Street are closer to the railroad as compared to the homes on the Glenside Avenue end of Henry Street.

Morris Avenue

September 27, 2003

The railroad trestle over Morris Avenue was taken down some years ago for safety reasons. If the trains were to be reactivated, this is one of three bridges that have to be rebuilt, including the adjoining rail beds and support structures. It will also be necessary to raise the utility lines on one side of the street. The support structures on both sides of the street will require major masonry work, even possibly replacing them. The house to the right side of the trestle support and the rear yard of the house around the corner on Denman Place are extremely close to the railroad right of way. On the opposite side of the street the building right next to the right of way and the rear yard of the house around the corner on Henry Street, the one with the pool in the back yard, are right under the right of way. To the left of the trestle support is the home of the Italian American Civic Association, which we have already covered. Also, a number of homes on the intersection of Glenside Avenue and Morris Avenue are fifty to one hundred yards away from the right of way.

Morris Court

September 27, 2003

On this street there are a hand full of homes and one business, about 50 to 75 yards away from track right of way. It is another very narrow street, which begets again safety issues. The most serious issue is the baseball field, other recreation fields, and the children's playground, which are heavily used, with no protection, e. g.: fence, high walls, to protect children from getting to tracks, about 125 yards from outdoor recreation facility. On this site is the headquarters of the Summit Recreation Department, with offices for staff, a public meeting room, and an indoor recreation facility. This area poses major safety issues.

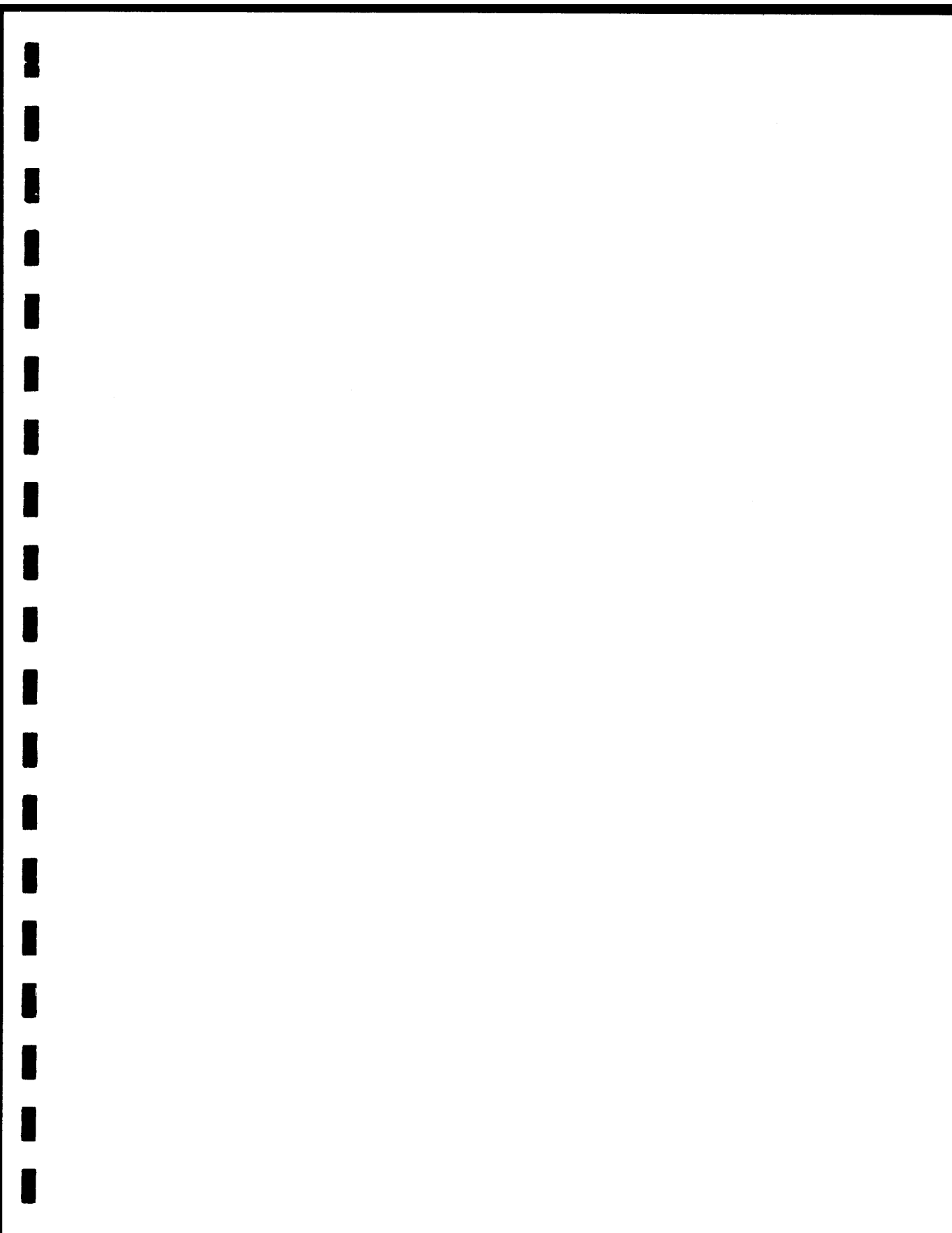


Russell Place

September 27, 2003

Stephens-Miller – Approximately 50 units to be developed (already contracted?), about 50 yards from the railroad right of way, located on left side of railroad (when facing towards downtown Summit).

The existing railroad trestle over Russell Place, and it's supports will more than likely have to be torn down and replaced and the adjoining beds will have to be rebuilt, or in the very least go through a major reconstruction. There are homes on either side of the existing track line, a number of which are 50 or so yards from track right of way. In point of fact the section of track running back toward Morris Court have homes even closer than that. It should also be noted that Russell Place is a very narrow street where emergency vehicles, such as fire trucks, have existing issues with railroad trestle's height and the width of the road between the trestle's supports. Once the Stephens-Miller property is developed we will have hundreds of additional people in this area very close to the railroad. This will only exacerbate the safety issues, evacuation issues, et al, for these residents of Russell Place.





## MORRISTOWN & ERIE RAILWAY INC.

OFFICE ADDRESS:  
49 ABBETT AVENUE  
MORRISTOWN, NJ 07960

MAILING ADDRESS: APPENDIX 6  
P.O. Box 2206  
MORRISTOWN, NJ 07962-2206

Mayor M. Tripodi  
Borough of Kenilworth  
Borough Hall  
567 Boulevard  
Kenilworth, NJ 07033

June 27, 2002

Dear Mayor Tripodi,

The Morristown & Erie Railway has been selected to rehabilitate and operate the former Staten Island Railroad which operates in your community. The rehabilitation work will begin with a general cleaning and brush cutting/clearing along the right of way. This is in preparation for restoring the track structure. We intend to take every measure possible to be as unobtrusive and sensitive to the concerns of the citizens along the right of way. Our brush cutting and clearing program will be accomplished in a manner to leave sufficient screening for our neighbors. When the construction work for the railroad is completed we will establish a screening, planting and landscaping with the intention to provide both sound and visual screening from railroad operations.

We anticipate being good neighbors and look forward to working with you and your staff as we accomplish the task assigned to us. If you have any questions, please feel free to contact me at (973) 267-4300.

Sincerely,  
MORRISTOWN & ERIE RAILWAY, INC.

Gordon R. Fuller  
Chief Operating Officer

BOROUGH OF KENILWORTH

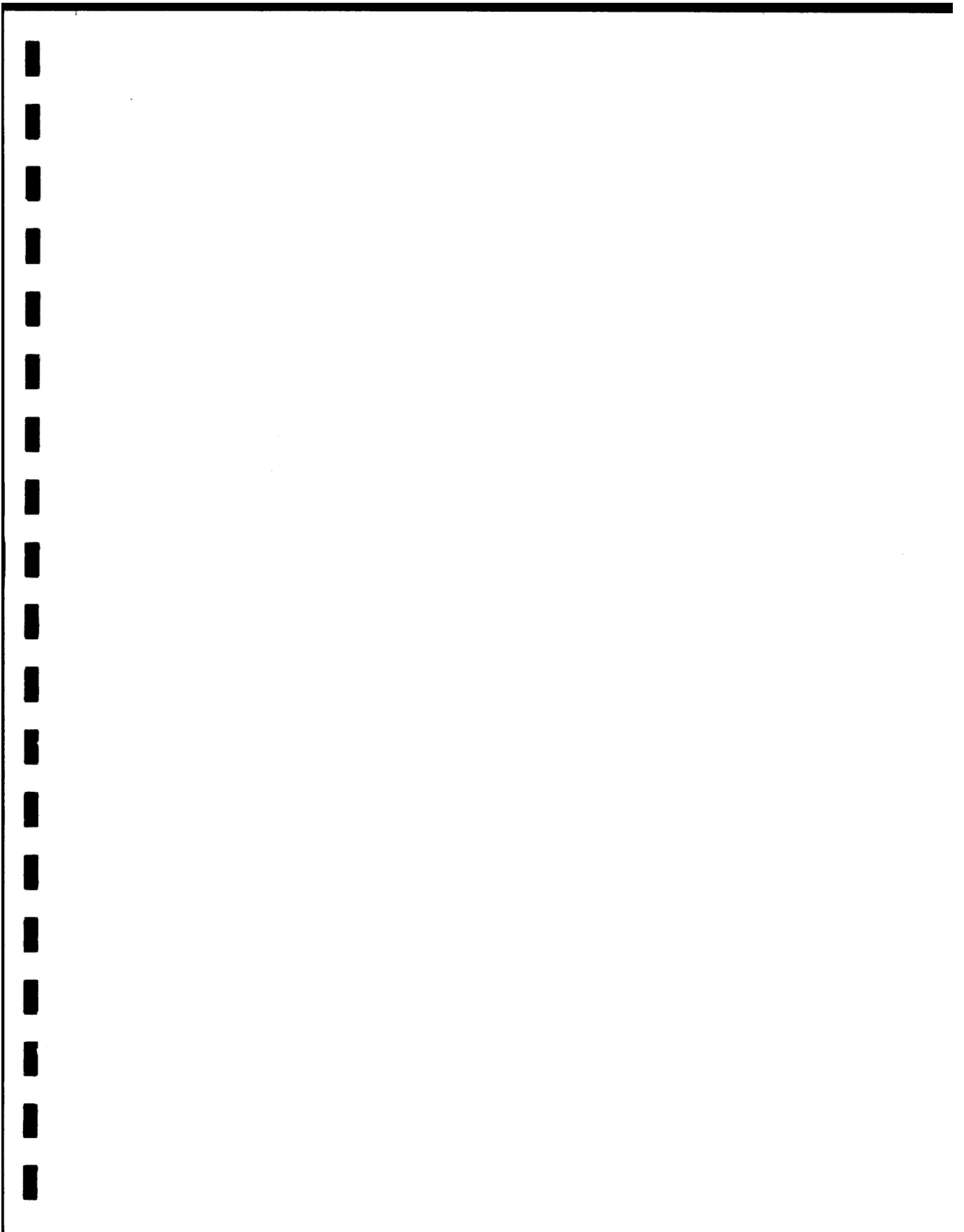
JUL 30 2002

RECEIVED

FILE COPY

PHONE: (973) 267-4300 FAX: (973) 267-3138

EMAIL: MORRISTOWN.ERIE@WORLDNET.ATT.NET



## **County's Agreement with M&E Railway Allows for Maximum Input and Control**

On the advice of counsel and after exhausting every available legal option to prevent the reactivation of the Staten Island and Erie Railroads, County of Union officials met with the line's operators and agreed to new terms, giving the County control of critically important issues affecting municipalities along the route.

A special meeting of the Union County Board of Chosen Freeholders on Thursday will consider a proposal to allow the Morristown and Erie Railroad to move forward with its plans to reactivate the rail lines.

Under newly negotiated terms with M&E, the County gained control of significant matters that affect the quality of life of residents. Among the concerns agreed upon are the hours of operation; the number of cars allowed per train and the number of trains that could move along the lines per week.

"After extensive legal review, it was determined that while we can't stop it, we can control it," said Union County Manager George W. Devanney. "We have new terms with the Morristown and Erie Railroad that provides the County of Union the maximum amount of control permitted by federal law on lines that run through several Union County municipalities. After negotiating with M&E, we now control very important components of the operation. We have limited the number of trains per week and when they move on the lines. We control the time of day they will run, as well as the size of the trains and the speed they travel. These trains will only carry freight, permitted by local zoning ordinances. These were critical issues that are important to our residents and our municipalities and we were not moving forward until they were resolved. Now they are."

The County of Union put the project on hold for the past several months while it exhausted every legal path open to it.

"We've sought and received two legal opinions advising us that any effort on the County's part attempting to prohibit the reestablishment of the line would be very costly and, ultimately, we would not prevail. Also, the line potentially could have been used by heavy freight. Our agreement, as established, gives us the best position to control the rails that are in our county and means that we are not playing Russian Roulette with our families' quality of life or with their tax dollars," Devanney said."

The agreement with M&E affects the rail lines that travel only through Union County and will be operated as a shortline railroad service servicing local businesses. Based on the economic activity estimated, the maximum numbers of cars the County will allow in a

train will be 12 and there will be three trains per week in the first year of operation and three-to-five trains per week in year three. The County of Union has established that the trains will travel at no more than 25 miles per hour.

The County of Union was aware that the rail line was in play for potential heavy freight operators and that there was a need to be pro-active in protecting the rights of Union County residents in the towns potentially affected. "With the possibility of a railroad operating through our towns without our input, the new terms with M&E was the best scenario for the municipalities within County of Union, Devanney said. "Without taking the initiative we did, municipalities could have had a very unfavorable situation, with long, heavy freight trains moving at any time of the day or night."

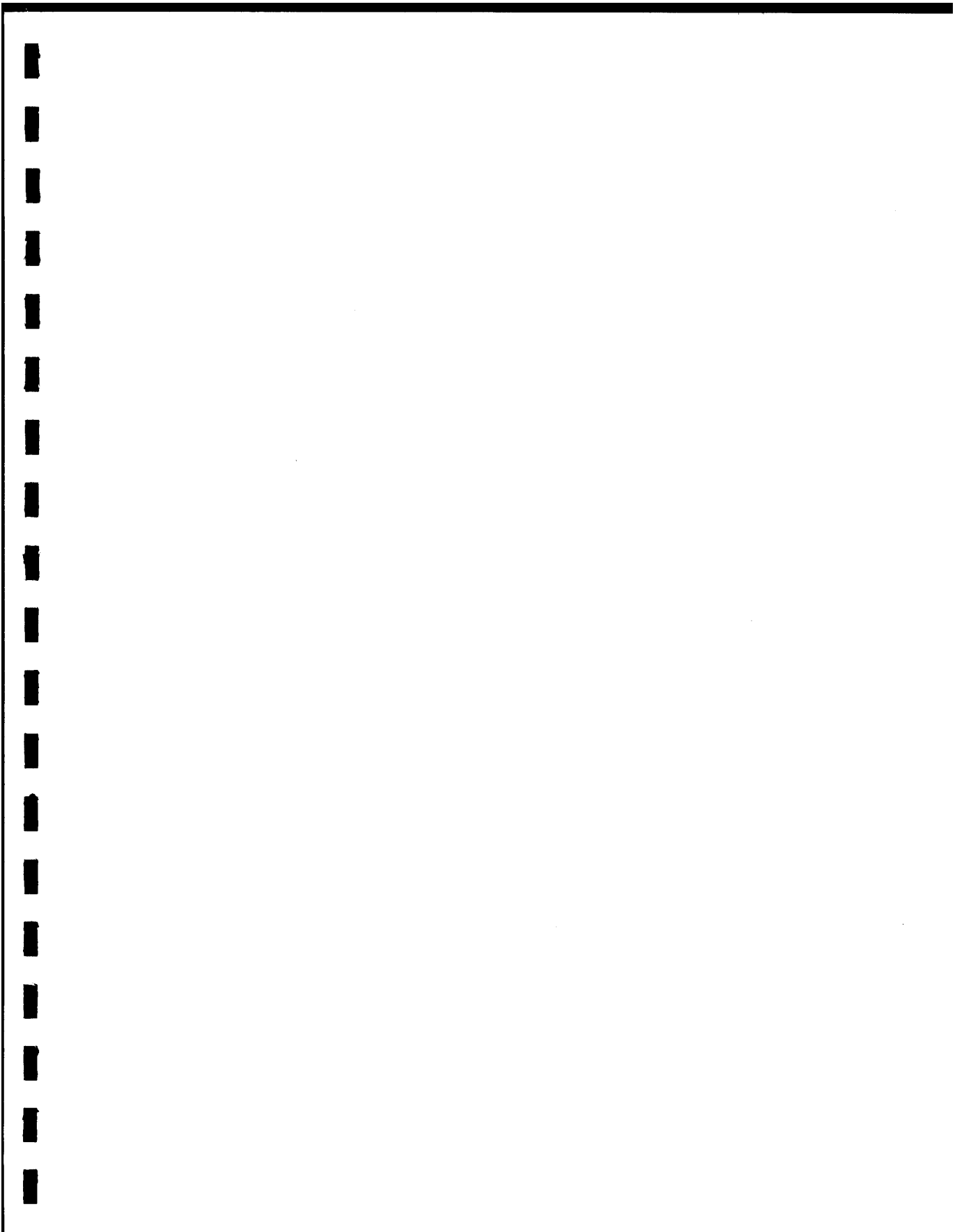
The Staten Island and Rahway Valley Railroads were out of service for a number of years. County government recognized that these lines could be purchased and activated by Class I railroads, such as Norfolk Southern or CSX, which is heavy cargo that travel at higher rates of speed, and that no county or local concerns would be addressed by the operator.

The restoration of the tracks and grade crossings and reactivation of the line for use by trains at low-speed is part of a project that is completely funded with state transportation dollars. Stipulated in the operating agreement is that the County controls the hours of operation and physical improvements to the right-of-way. While the content of the trains is governed by federal regulations, the project is a short-line operation and not a through service, serving only Union County municipalities. There will be no transport from New York or to the west. This gives municipalities, through zoning ordinances, the ability to determine the types of industry permitted along the rail line, specifying the products and materials allowed in the zone and eventually transported on the rails.

"The safe operation of these rail lines is determined by federal regulation and the railroad grade crossings are built to federal standards," Devanney said. "The state conducts inspections of the crossings to ensure they meet safety standards. Based on the size of the trains and their speed, the average time to pass a grade crossing would be about 61 seconds, including the activation of the safety signals. This is important when you consider the possibility of emergency service vehicles on the roadways."

The materials transported over the line will be locally generated from businesses along the corridor. Trains will travel at off-peak, low-volume hours. A diagnostic team from the New Jersey Department of Transportation will determine the types of signals and gates that will be required and installed at all grade crossing locations. The NJDOT also will advise as to the most appropriate times to cross at all locations.

The M&E Railroad will be holding programs for schools and community groups to increase awareness of railroad operations and the company will address safety concerns as part of its outreach plan.



## **Appendix 8**

### **Roads Crossed by RVRR/SIRY at Grade**

#### **Roads Crossed by RVRR at Grade**

##### **Roselle Park:**

State Route 28/West Westfield Avenue  
Woodside Road  
West Webster Avenue  
Pinewood Avenue  
West Colfax Avenue

##### **Kenilworth**

Maplewood Avenue  
Michigan Avenue  
Faitoute Avenue  
Beechwood Avenue  
Market Street  
Fairfield Avenue  
Summit Avenue (east of Garden State Pkwy.)  
Kenilworth Boulevard

##### **Union**

US Route 22 (Eastbound lanes)  
US Route 22 (Westbound lanes)  
Springfield Road/Liberty Avenue  
Morris Avenue  
Vaux Hall Avenue

##### **Springfield**

Rahway River Parkway (recreational trail)  
Meisel Avenue  
Mountain Avenue  
Tooker Place  
Baltusrol Way  
Shunpike Road (bridge)

##### **Summit**

Four streets are crossed by bridge: Broad Street, Morris Avenue, Ashwood Avenue and Russell Place. The bridges over Broad Street and Morris Avenue have been removed.



**Roads Crossed by SIRY at Grade**

Linden

New Brunswick Avenue (Tosco Bayway refinery entrance)

Roselle

St. George's Avenue

Chestnut Street

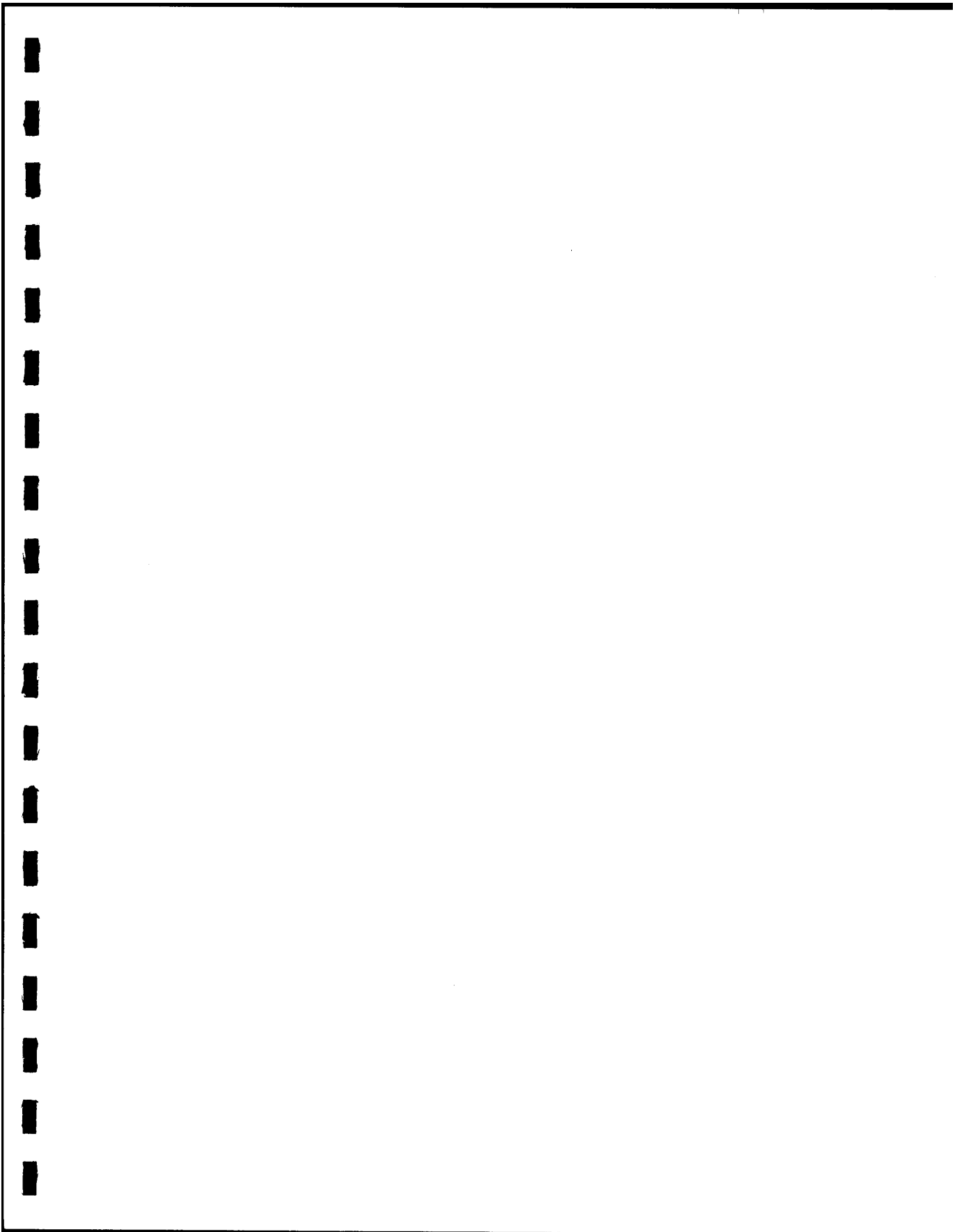
Wheatsheaf Road

9<sup>th</sup> Avenue

Pine Street

Amsterdam Avenue

South Avenue



## Towns opposing RR activation

By Tom Canavan  
Editor in Chief

If the county won't take action against the Morristown and Erie Railway Inc. to stop the reactivation of the Rahway Valley railroad line, then the municipalities that are in opposition to a possible reactivation may do it for the freeholders.

Kenilworth Mayor Michael Tripodi is hosting a meeting Saturday at Kenilworth Borough Hall, where he said he will discuss the issue with representatives of the six other towns that are opposing the rail line. In the end, there could be plans for collective legal action against the railroad company.

"After all the towns passed resolutions opposing the reactivation of the railroad, the county responded by saying, "We're in your corner." Now we want to see the county take action," Tripodi said. "We want the county to tell the railroad company to cease and desist the rehabilitation of its tracks."

Representatives from Kenilworth, Roselle, Roselle Park, Springfield and Summit attended a meeting in October in Roselle Park where officials decided they would send a letter to County Manager George Devanney in which they would request the county's help in resolving the matter.

The letter was sent, but, according to Tripodi no one from the county has responded. "We expect the county to enforce the contract that was signed on May 8 between the county and the railroad," he said.

That contract which was also referred to in the letter to the county, holds that the county can deny Morristown and Erie Railway from reactivating the railroad line if the municipalities through which the tracks run oppose the plan. That's what municipal officials are, now using as their ammunition to block any work on any of the tracks. Approval of the municipalities is needed to advance to Phase II of the project.

"The county should demand that M&E cease and desist with any permanent tract installation, third party negotiations and any other activity that relates to reactivating the rail lines," states the letter, which is signed by Roselle Park Mayor Joseph Delorio. "In the event M&E refuses to comply with the county's demand, I am requesting that the county exercise its legal remedies to enforce the agreement and protect the residents."

According to Tripodi, the Township of Union was the only town not to have a representative at the October meeting.

Editors note: This article was accompanied by the following pictures:

- Liberty Avenue in Union
- Behind the Breeze building in Union

### Traffic impact

Based on a traffic count conducted two weeks ago by the staff of the newspapers published by Worrall Newspapers, an active railroad would have the biggest impact on the Township of Union. ✓

The Rahway Valley railroad would cross Route 22, one of the busiest - and most confusing - highways in the state. On a recent Wednesday afternoon 1,581 vehicles traveled Route 22 West from 1 to 1:30 p.m. A total of 1,676 vehicles traveled Route 22 East from 1:30 to 2 p.m.

In Cranford, along South Avenue 687 vehicles crossed the railroad tracks between 1 and 1:30 p.m. on the same Wednesday. Along the Boulevard in Kenilworth, 620 vehicle crossed the tracks during the same time period, with no fewer than 93 vehicles crossing the track in a five minute interval and as many as 132 in another five-minute interval, all within the same time period.

Springfield's Mountain Avenue saw 580 vehicles cross its tracks during the same time period., while Roselle Park had 417 vehicles cross its tracks heading west along Westfield Avenue.

In Roselle, trains would cross the tracks on Chestnut Street, where 79 vehicles were counted from 1:10 to 1:40 p.m. on that same Wednesday.

"The town that would be affected the quickest would be Roselle," Tripodi said, noting that sleeves that muzzle noise have already been placed on the tracks. "Is this for maintenance? I hardly think so."

While the Township of Union has not passed a resolution this year opposing the reactivation of the railroad line, its Township Committee passed a resolution in 1997 which the current mayor said still reflects the opinion of the 2002 governing body.

In 1997, then-Administrator Lou Giacona said the resolution condemned the Union County Planning Board's proposal to allow the reactivation of the railroad line. The 1997 Township Committee members who voted for the resolution were Democrats Joe Florio and Anthony Terrezza as well as Republicans Richard McMillan, Greg Muller and John Paragano.

Giacona said the county began to consider the reactivation of the railway in 1995 to serve businesses along the tracks. However it was the feeling of the 1997 committee members that the proposal to ran a freight train across Route 22 was unwise.

Currently, Union Mayor Patrick Scanlon said the 2002 Township Committee, which consists of all Democrats, is not in favor of the reactivation of the tracks. Scanlon said the Township Committee does not plan to act on a new resolution because they do not feel the tracks will be used in the future.

"We have been assured by the Union County freeholders that the tracks would not be reactivated for commercial use," Scanlon said. "It would be absurd to reactivate a railroad that crosses over Route 22 where there are buildings built over the tracks."

Officials have not addressed how a freight train traveling through the towns would affect emergency services needing to cross the tracks.

Police, fire and EMS responders could find that their response times would increase because of delays waiting for a train to pass.

#### County's denial

In October, Freeholder Nicholas Scutari signed a letter that was sent to residents of the affected communities in which he emphatically denies that rail service will begin along these lines.

"The clearing of these lines is strictly for health and public safety reasons, not for reactivation," Scutari wrote. "There is no intention of starting any rail service along these lines, in your community."

Freeholder Deborah Scanlon, who lives in Union, said she cannot envision trains crossing Route 22, regardless if it's during the day or night, which is when the freight trains could use the tracks.

She said the railroad company received complaints about garbage and rats and is clearing the tracks to address these problems.

"The county won't do anything without the okay from the towns. If they don't want it it will not happen," Scanlon said. "In Springfield alone, an entire bridge that the tracks ran over has been taken down. The reactivation of these tracks would be a tremendous expense."

Scanlon said she would not want the train to run through her community either.

"Even if the trains only ran at night it would be ludicrous to cross Route 22 at anytime," she said.

Despite the reassurances, including during public meetings, that the county will not allow the reactivation, there is still distrust toward the Union County Board of Freeholders among local officials. They see cleanup efforts along the tracks, noise sleeves placed on the tracks and other efforts that would make them draw a conclusion that Morristown and Erie Railway will restore the Rahway Valley line. It's for those reasons the local officials will continue to meet and try to stop the reactivation from occurring, Tripodi said.

The meeting in Kenilworth is scheduled for Saturday at 10 a.m.

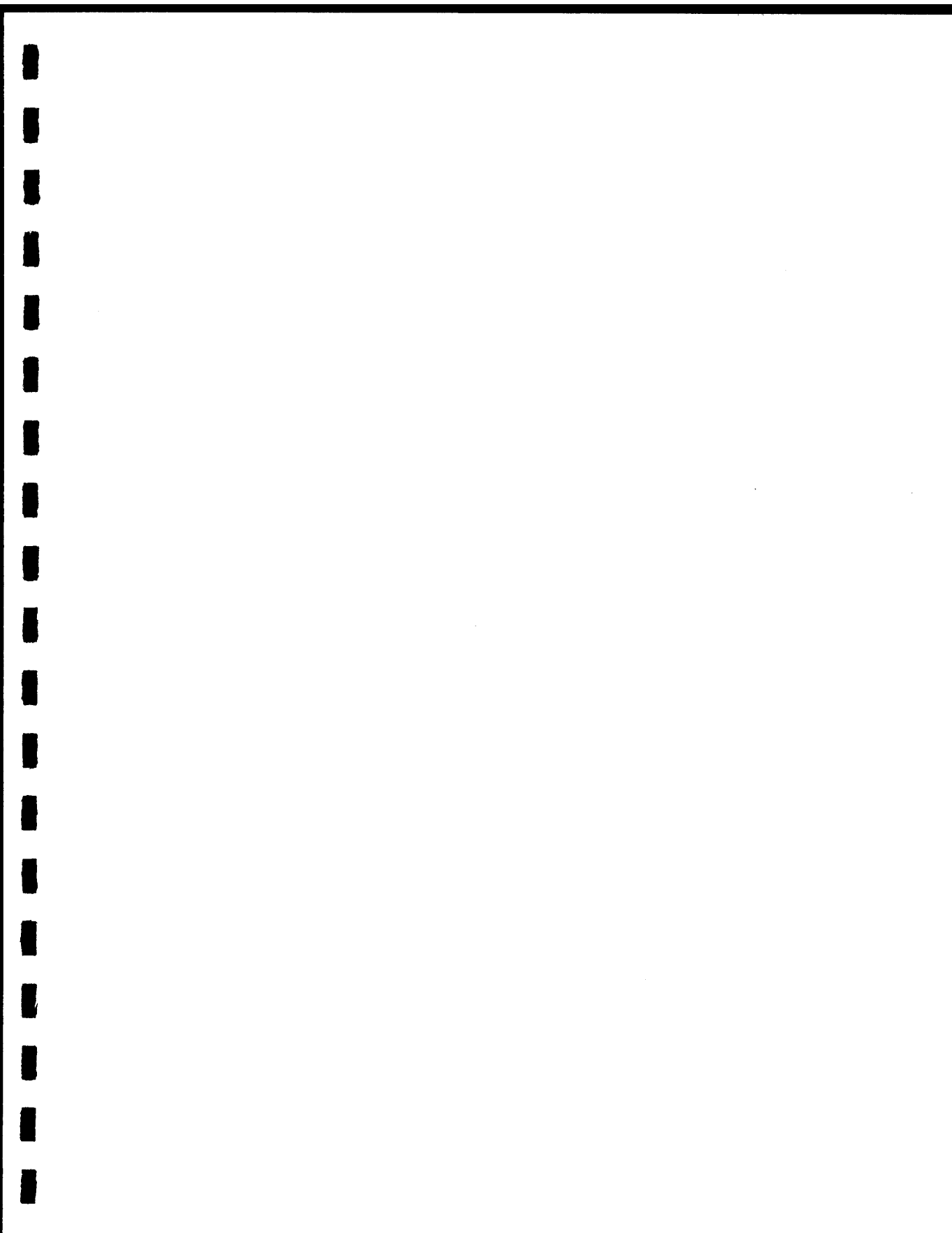
A representative from Morristown and Erie Railway could not be reached as of press time.

Staff Writer Steve Reilly contributed to this report. Staff members Nicholas Loffredo, Steve Proctor, Cheryl Hehl, Toniann Antonelli, and Joshua Zaitz assisted in gathering information.

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Courtesy of *The Union Leader* - November 21, 20002

 **BACK**



Appendix 10  
Schools, Parks and Places of Worship within ¼ mile of RVRR Lines

Summit

Roosevelt School  
Jefferson School  
Edison Recreation Center  
Hidden Valley Park  
Briant Park

Springfield

Temple Beth Ahm  
Jonathan Dayton HS  
St. James Catholic Church  
St. James School  
Springfield Recreation Center and YMCA  
Florence Gaudineer School  
Congregation Israel of Springfield  
Temple Sharey Shalom  
Rahway River Parkway (Meisel Field)  
Baltusrol Golf Club  
Lenape Park

Union

Battle Hill School

Kenilworth

Galloping Hills Public Golf Course

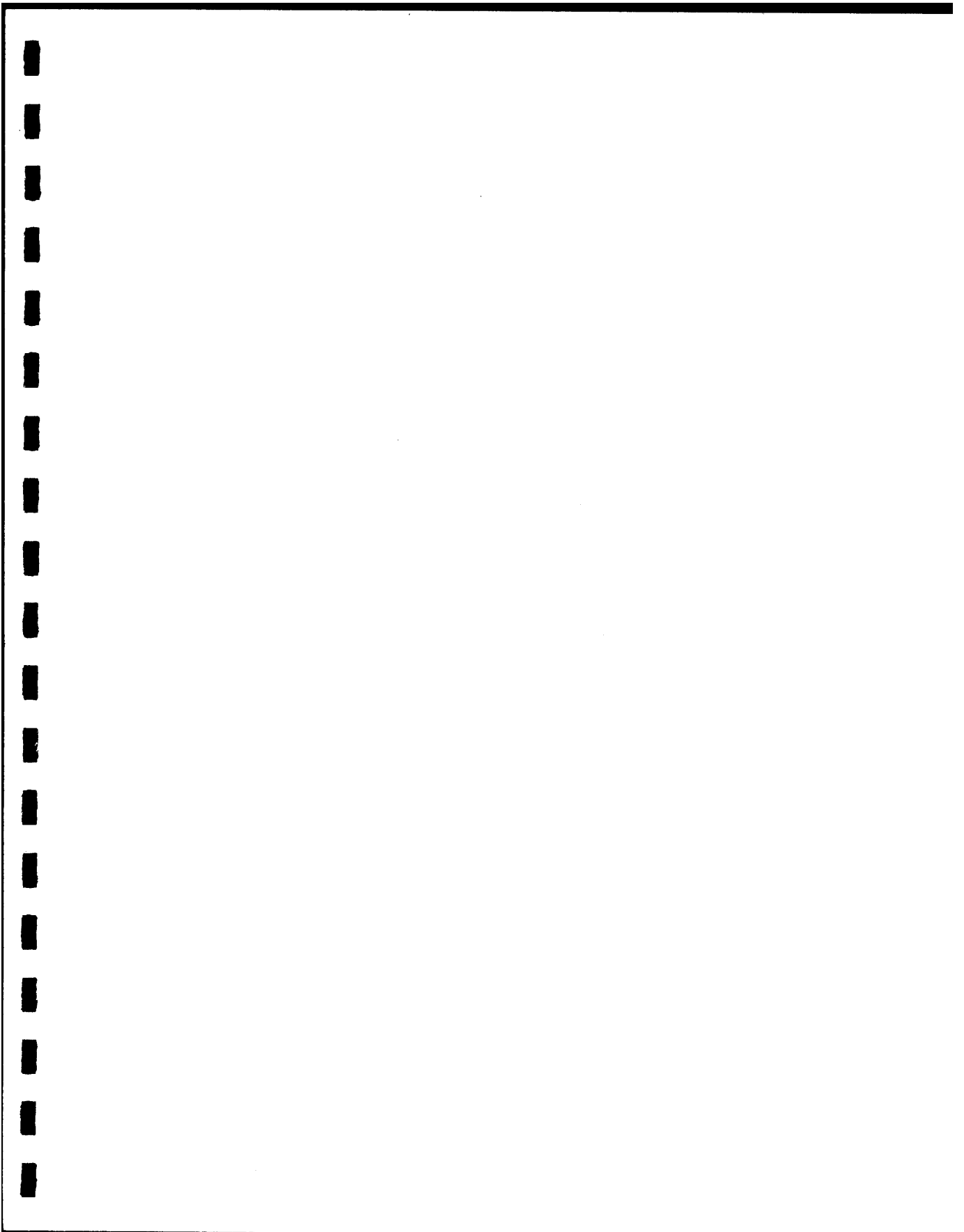
Roselle Park

Aldene School

Roselle

Washington ES  
Roselle Catholic HS  
Leonard V. Moore MS

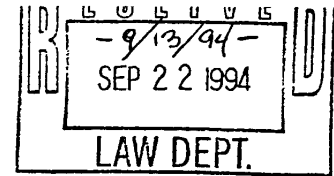






State of New Jersey

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND ENERGY



APPENDIX 11

CHRISTINE TODD WHITMAN  
Governor

ROBERT C. SHINN, JR.  
Commissioner

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

SEP 13 1994

Heidi Minuskin  
Farer Siegal & Fersko  
600 South Avenue  
P.O. Box 580  
Westfield, NJ 07091-0580

RE: Administrative Consent Order, In the Matter of Amerace Corporation and  
Harvard Industries, Inc. (Harvard ACO)  
Amerace Corporation-ESNA Division/Harvard Industries (Harvard)  
Union Township, Union County  
ISRA Case #s 84329 & 88A66

Dear Mr. Farer:

The New Jersey Department of Environmental Protection (NJDEP) has completed its review of the Quarterly Progress Reports dated November 9, 1993, January 14, June 17 and July 15, 1994, submitted by Environmental Waste Management Associates (EWMA) on behalf of the above referenced facility. Based upon NJDEP's review of the above referenced Quarterly Progress Reports, Harvard shall address the following:

I. SOILS

Area #9 - Cutting Oil & Kerosene Underground Storage Tanks

1. No further soils investigation is required at this time pending NJDEP's further evaluation of Harvard's ground water remediation. Harvard has proposed institutional controls for the contaminated soils in this area which have been delineated. NJDEP agrees that institutional controls would be appropriate for this Area of Concern, pending Harvard's completion of the requirements noted in Section III below.

Cadmium Contamination along the Railroad Line in Areas #3 & #7

2. Harvard, in its Quarterly Progress Report dated November 9, 1993, claimed that the elevated levels of cadmium (Cd) remaining in Areas #3 and #7 were not Harvard's responsibility based upon: A) the contamination was off-site, on property owned by the Rahway Valley Railroad Company (Railroad); and B) represented "background" levels associated with the Railroad's operations. NJDEP reviewed Harvard's off-site claim and found that: A) Cd was specifically used in Harvard's operations; B) Harvard did operate in these "off-site" areas; and C) discharges from these operations did occur. Therefore, NJDEP rejected Harvard's off-site claim since Areas #3 and #7 are part of Harvard's Industrial Establishment as defined by the Industrial Site Recovery Act (ISRA) (PL. 1993, c. 139). NJDEP also determined that additional sampling along the Railroad in locations not associated with Area #3 or #7's operations were required to support Harvard's background claim. NJDEP informed Harvard, in the

phone conversation with the Case Manager on June 14, 1994, that additional sampling along the railroad, in non-Harvard operational areas, was required before Harvard could support its background claim. Harvard collected additional Cd samples and included these results with Harvard's Quarterly Progress Report dated July 15, 1994. NJDEP has reviewed the soil results included with Harvard's Quarterly Progress Report dated July 15, 1994, and acknowledges Harvard's statement that Cd levels in these areas do not represent background conditions. However, Harvard did not include sample location maps with this Progress Report, in accordance with N.J.A.C. 7:26E-4.9(d) and 6.6(b). Please be advised that until these maps are submitted, NJDEP can not evaluate background conditions and can not determine if Harvard has delineated the horizontal and vertical extent of the Cd contamination to the 3 part per million (ppm) level established in NJDEP's Soils Cleanup Plan approval dated August 7, 1987. Therefore, Harvard's proposal to address the Cd contamination in Areas 3 & 7 with institutional controls is premature. Harvard shall submit the required sample location maps which identify all past and present sample locations, depths and results.

3. NJDEP, during a review of all the Cd results has identified a discrepancy in Harvard's Report on Soils Cleanup Activities, dated November 14, 1988, for Area 3. The tabulated sample depths for locations 56-48 and 56-51 do not correlate with the final excavation depths in these locations. The samples appear to have been collected from above the final excavation depths in these two locations, which would negate the use of these two sample locations. Therefore, it appears that no post-excavation samples were collected which can be used to verify that the soils are clean at the extent of the excavation. Harvard shall explain this discrepancy.

4. Harvard has not demonstrated that only institutional controls alone, without any engineering controls, would be appropriate and effective in protecting public health, safety and the environment from the Cd contaminated soils, in accordance with P.L. 1993 c.139 sections 35 and 36 and N.J.A.C. 7:26E-5. Harvard shall submit the appropriate documentation to support Harvard's position that only institutional controls are needed.

## II. GROUND WATER

5. Please be advised that NJDEP has reviewed the free product recovery results from the quarterly reports, dated June 17 and July 15, 1994, and finds no correlation between product removal frequency and the amount of free product recovered from wells ESNA 12A and ESNA 16 between February 21 and July 7, 1994. The results do suggest that shorter time intervals between product removal appear to be producing higher yields of product. Harvard shall explain the reason for the variability in collection frequency and why free product recoveries from wells ESNA 12A and ESNA 16 were so erratic between February 21 and July 7, 1994

6. Harvard shall continue its free product recovery from wells ESNA 12A and ESNA 16. Harvard shall increase the frequency of product removal from both wells from monthly to biweekly.

## III. DECLARATION OF ENVIRONMENTAL RESTRICTIONS (DER)

7. Harvard shall prepare and submit a signed draft DER for Area #9 for NJDEP's review. Enclosed is a copy of the NJDEP's most current DER model; Harvard shall use this model when preparing the draft. Upon the NJDEP's approval of Harvard's draft DER, Harvard shall fulfill the filing requirements referenced in section 36 of P.L. 1993 c.139.

8. Please be advised that the Railroad must consent to Harvard's proposal for the use of non-residential standards and a DER in Areas #3 and #7. Without the consent of the Railroad and the recording of a DER by the Railroad pursuant to ISRA, Harvard can not achieve final compliance with ISRA by proposing the use of non-residential cleanup criteria. Resolution of these issues is considered to be outside the regulatory authority of NJDEP and is a matter appropriately resolved between the involved parties. If the Railroad agrees to accept non-residential levels and institutional controls for these Areas, then Harvard shall submit a draft DER signed by the property owner (Railroad) for NJDEP's review. Harvard shall continue to advise NJDEP of Harvard's progress in resolving these issues.

9. Any proposal to leave contaminant concentrations on-site exceeding the NJDEP's applicable residential cleanup criteria, shall be in accordance with ISRA, P.L. 1993, c. 139, section 4i, including whether the cost difference between implementing the residential cleanup criteria and the nonresidential criteria exceeds ten percent of the cost to implement the non-residential cleanup criteria, and proof of acceptance of the non-residential cleanup criteria by the current property owner.

#### IV. GENERAL COMMENTS

10. Harvard shall submit a copy of Hazardous Waste Manifest #NJA1914157 signed by the receiving facility. An unsigned copy of this manifest was included with the July 15, 1994, Quarterly Progress Report.

11. Harvard shall submit documentation that S&W Waste, Inc. accepted the materials sent to them under Hazardous Waste Manifest #NJA1481972. The copy of the manifest included with the June 17, 1994, Quarterly Progress Report had been flagged by S&W Waste, Inc. in Manifest Item 19 - Discrepancy Indication Space: pending manifest review and quality control.

12. Harvard shall continue to report quarterly on the recovery of free product from monitoring wells ESNA 12A and ESNA 16. However, please be advised that NJDEP will no longer require quarterly reports for the other Areas of Concern. Instead, Harvard shall submit a revised Remedial Action activities schedule, which includes projected completion dates for the delineation and remediation of the remaining Areas of Concern, for NJDEP's review and approval.

13. Harvard shall submit the information required by items 2, 3, 4, 5, 7, 10, 11 and 12 above along with Harvard's next report. Please be advised that based upon Harvard's amended Implementation Schedule included with Harvard's June 17, 1994 Quarterly Progress Report, Harvard's next report is due in this office on or about October 15, 1994.

14. Pursuant to P.L. 1993 c.139, a remediation funding source is to be established in an amount equal or greater than the cost estimate of the implementation of the remediation and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. P.L. 1993 c.139, section 25 allows for a change of the amount in the remediation funding source as the cost estimate changes. Please provide the current estimated cost of the remaining remediation required at the site.

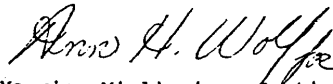
Any increases in the estimated cost will require an increase in the amount in the remediation funding source to an amount at least equal to the new estimate.

Any requests to decrease the amount in the remediation funding source will be reviewed and approved by the NJDEP upon a finding that the remediation cost estimate decreased by the requested amount.

15. On February 22, 1994, NJDEP promulgated the ISRA Fee Rule amendments at 26 N.J.R. 1142, which were proposed on April 5, 1993 at 25 N.J.R. 1375. Pursuant to the fee rule amendments, the NJDEP will bill an owner or operator according to the direct billing formula at N.J.A.C. 7:26B-1.10(f)2. At this time, the NJDEP intends to process bills on a semi-annual basis. The NJDEP encourages responsible parties to use the "Technical Requirements for Site Remediation" (N.J.A.C. 7:26E) as well as any other current NJDEP guidance documents to assist in remediation activities and thereby minimize NJDEP review time. The complexity of the environmental contamination at the site and the quality of the workplans and reports submitted to the NJDEP will dictate the oversight costs to the regulated community.

If you have any questions regarding this letter, please contact the Case Manager, Michael Mandracchia, at 609-777-0899.

Sincerely,



Maurice Migliarino, Section Chief  
Bureau of Environmental Evaluation  
And Cleanup Responsibility Assessment

c: Frank Camera, BEERA  
Helen Dudar, BGWPA  
Ray Handwerker, Harvard Industries  
Nathan Fenno, Rahway Valley Railroad Company  
John Brennan, EWMA

LOT 6

BOOK 3401 PAGE 202

ROAD

BLOCK

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EXISTING RAILROAD R.O.W. (TYP.)

733.07'

N 27°06'34" W  
85.60'

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26.62'

BLOCK 5107

LOT 1

JX HALL

(50' WIDE R.M.)